code of federal regulations

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Agriculture

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PARTS 1000 TO 1029

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PARTS 1030 TO 1059

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Revised as of January 1, 1986

522-008-00015-1

code of federal regulations

Agriculture

7

PARTS 1000 TO 1059

Revised as of January 1, 1986

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Cite this Code CFR

thus: 7 CFR 1000.1

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Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

ISSUE DATES

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16	as of January 1
Title 17 through Title 27	as of April 1
Title 28 through Title 41	as of July 1
Title 42 through Title 50	as of October 1

The appropriate revision date is printed on the cover of each volume.

LEGAL STATUS

The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

HOW TO USE THE CODE OF FEDERAL REGULATIONS

The Code of Federal Regulations is kept up to date by the individual issues of the Federal Register. These two publications must be used together to determine the latest version of any given rule.

To determine whether a Code volume has been amended since its revision date (in this case, January 1, 1986), consult the "List of CFR Sections Affected (LSA)," which is issued monthly, and the "Cumulative List of Parts Affected," which appears in the Reader Aids section of the daily Federal Register. These two lists will identify the Federal Register page number of the latest amendment of any given rule.

EFFECTIVE AND EXPIRATION DATES

Each volume of the Code contains amendments published in the Federal Register since the last revision of that volume of the Code. Source citations for the regulations are referred to by volume number and page number of the Federal Register and date of publication. Publication dates and effective dates are usually not the same and care must be exercised by the user in determining the actual effective date. In instances where the effective date is beyond the cut-off date for the Code a note has been inserted to reflect the future effective date. In those instances where a regulation published in the Federal Register states a

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date certain for expiration, an appropriate note will be inserted following the text.

OMB CONTROL NUMBERS

The Paperwork Reduction Act of 1980 (Pub. L. 96-511) requires Federal agencies to display an OMB control number with their information collection request. Many agencies have begun publishing numerous OMB control numbers as amendments to existing regulations in the CFR. These OMB numbers are placed as close as possible to the applicable recordkeeping or reporting requirements.

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Provisions that become obsolete before the revision date stated on the cover of each volume are not carried. Code users may find the text of provisions in effect on a given date in the past by using the appropriate numerical list of sections affected. For the period before January 1, 1973, consult either the List of CFR Sections Affected, 1949-1963, or 1964-1972, published in three separate volumes. For the period beginning January 1, 1973, a "List of CFR Sections Affected" is published at the end of each CFR volume.

CFR INDEXES AND TABULAR GUIDES

A subject index to the Code of Federal Regulations is contained in a separate volume, revised annually as of January 1, entitled CFR INDEX AND FINDING AIDS. This volume contains the Parallel Table of Statutory Authorities and Agency Rules (Table I), and Acts Requiring Publication in the Federal Register (Table III). A list of CFR Titles, Chapters, and Parts and an alphabetical list of agencies publishing in the CFR are also included in this volume.

An index to the text of "Title 3--The President" is carried within that volume.

The Federal Register Index is issued monthly in cumulative form. This index is based on a consolidation of the "Contents" entries in the daily Federal Register.

A List of CFR Sections Affected (LSA) is published monthly, keyed to the revision dates of the 50 CFR titles.

REPUBLICATION OF MATERIAL

There are no restrictions on the republication of material appearing in the Code of Federal Regulations.

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For a summary, legal interpretation, or other explanation of any regulation in this volume, contact the issuing agency. Inquiries concerning editing procedures and reference assistance with respect to the Code of Federal Regulations may be addressed to the Director, Office of the Federal Register, National Archives and Records Administration, Washington, D.C. 20408 (telephone 202-523-3517). Sales are handled exclusively by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 (telephone 202-783-3238).

JOHN E. BYRNE,
Director,
Office of the Federal Register.

January 1, 1986

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THIS TITLE

Title 7—AGRICULTURE is composed of sixteen volumes. The parts in these volumes are arranged in the following order: Parts 0-45, Parts 46-51, Part 52, Parts 53-209, Parts 210-299, Parts 300-399, Parts 400-699, Parts 700-899, Parts 900-999, Parts 1000-1059, Parts 1060-1119, Parts 1120-1199, Parts 1200-1499, Parts 1500-1899, Parts 1900-1944, and Part 1945-End. The contents of these volumes represent all current regulations codified under this title of the CFR as of January 1, 1986.

An alphabetical list of U.S. standards for grades of processed fruits, vegetables and certain other products appears in the Finding Aids section of the volume containing Part 52.

The Food and Nutrition Service current regulations in the volume containing Parts 210-299, include the Child Nutrition Programs and the Food Stamp Program. The regulations of the Federal Crop Insurance Corporation are found in the volume containing Parts 400-699.

All marketing agreements and orders for fruits, vegetables and nuts appear in the volume containing Parts 900-999. All marketing agreements and orders for milk appear in the three volumes containing Parts 1000-1199. Part 900—General Regulations is carried as a note in each of the three volumes containing Parts 1000-1199, and Part 1000—General Provisions of Federal Milk Marketing Orders is carried as a note in each of the two volumes containing Parts 1060-1199, as a convenience to the user.

For this volume Clarietha T. Washington was Chief Editor. The Code of Federal Regulations publication program is under the direction of Martha B. Girard, assisted by Robert E. Jordan.

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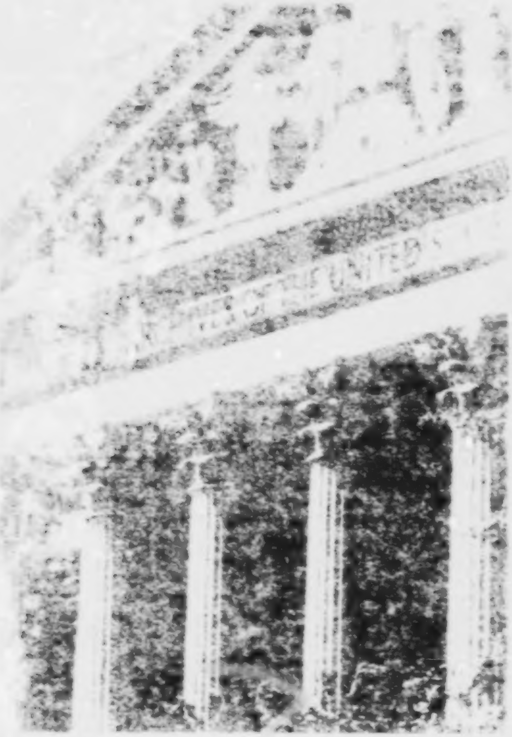

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Title 7—Agriculture

(This book contains Parts 1000 to 1059)

SUBTITLE B—REGULATIONS OF THE DEPARTMENT OF AGRICULTURE—(Continued):

Part

CHAPTER X—Agricultural Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture 1000

Subtitle B—Regulations of the Department of Agriculture (Continued)

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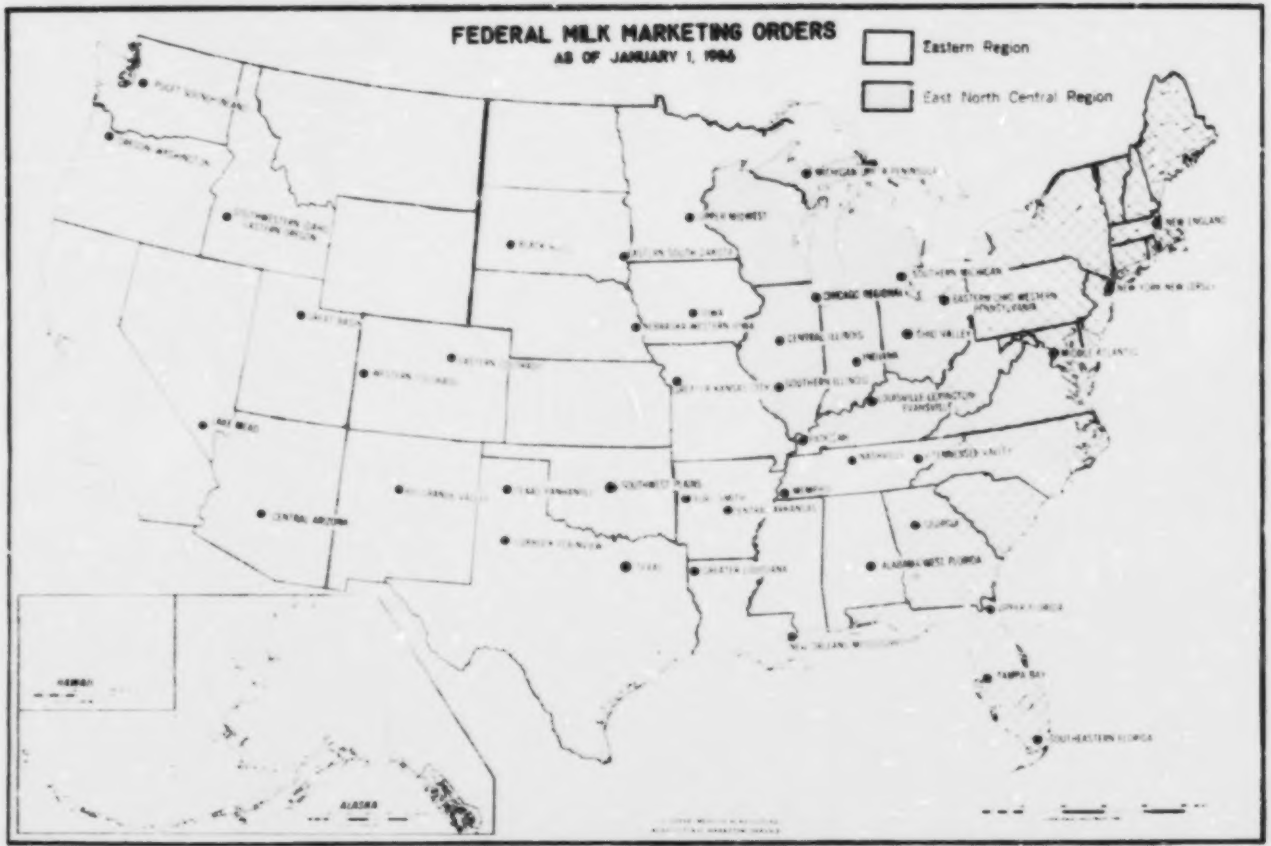
FEDERAL MILK MARKETING ORDERS
AS OF JANUARY 1, 1986
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East North Central Region
PUGET SOUND-INLAND
OREGON-WASHINGTON
SOUTHWESTERN IDAHO-EASTERN OREGON
GREAT BASIN
LAKE MEAD
CENTRAL ARIZONA
BLACK HILLS
EASTERN COLORADO
WESTERN COLORADO
RIO GRANDE VALLEY
TEXAS PANHANDLE
LUBBOCK-PLAINVIEW
SOUTHWEST PLAINS
TEXAS
EASTERN SOUTH DAKOTA
UPPER MIDWEST
IOWA
NEBRASKA-WESTERN IOWA
GREATER KANSAS CITY
FORT SMITH
CENTRAL ARKANSAS
GREATER LOUISIANA
NEW ORLEANS-MISSISSIPPI
MICHIGAN UPPER PENINSULA
SOUTHERN MICHIGAN
CHICAGO REGIONAL
CENTRAL ILLINOIS
SOUTHERN ILLINOIS
INDIANA
OHIO VALLEY
EASTERN OHIO-WESTERN PENNSYLVANIA
LOUISVILLE-LEXINGTON-EVANSVILLE
PADUCAH
NASHVILLE
TENNESSEE VALLEY
MEMPHIS
GEORGIA
ALABAMA-WEST FLORIDA
UPPER FLORIDA
TAMPA BAY
SOUTHEASTERN FLORIDA
MIDDLE ATLANTIC
NEW YORK-NEW JERSEY
NEW ENGLAND
HAWAII
ALASKA

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CHAPTER X—AGRICULTURAL MARKETING SERVICE

(Marketing Agreements and Orders; Milk)

DEPARTMENT OF AGRICULTURE

(This book contains Parts 1000 to 1059)

EDITORIAL NOTE: Nomenclature changes to Chapter X appear at 37 FR 8059, Apr. 25, 1972.

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7 CFR, Part 900, the general regulations with respect to marketing agreements and orders, is herein set forth for convenience of users of this volume.

PART 900—GENERAL REGULATIONS

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SOURCE: 25 FR 5907, June 28, 1960, unless otherwise noted.

NOMENCLATURE CHANGES: 37 FR 8059, Apr. 25, 1972; 38 FR 29798, Oct. 29, 1973.

Subpart—Rules of Practice and Procedure Governing Proceedings To Formulate Marketing Agreements and Marketing Orders

AUTHORITY: Sec. 10, 48 Stat. 37, as amended; 7 U.S.C. 610.

§ 900.1 Words in the singular form.

Words in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 900.2 Definitions.

As used in this subpart, the terms as defined in the Act shall apply with equal force and effect. In addition, unless the context otherwise requires:

(a) The term "Act" means Public Act No. 10, 73d Congress (48 Stat. 31), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937 (50 Stat. 246), as amended.

(b) The term "Department" means the United States Department of Agriculture.

(c) The term "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

(d) The terms Administrative Law Judge or Judge means any administrative law judge appointed pursuant to 5 U.S.C. 3105, and assigned to conduct the proceeding.

(e) The term "Administrator" means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in his stead.

(f) [Reserved]

(g) The term "FEDERAL REGISTER" means the publication provided for by the Act of July 26, 1935 (49 Stat. 500), and acts supplementary thereto and amendatory thereof.

(h) The term "hearing" means that part of the proceeding which involves the submission of evidence.

(i) The term "marketing agreement" means any marketing agreement or any amendment thereto which may be entered into pursuant to section 8b of the Act.

(j) The term "marketing order" means any order or any amendment thereto which may be issued pursuant to section 8c of the Act, and after notice and hearing as required by said section.

(k) The term "proceeding" means a proceeding upon the basis of which a marketing agreement may be entered into or a marketing order may be issued.

(l) The term "hearing clerk" means the hearing clerk, United States Department of Agriculture, Washington, D.C.

[25 FR 5907, June 28, 1960, as amended at 26 FR 7796, Aug. 22, 1961; 28 FR 579, Jan. 23, 1963; 37 FR 8059, Apr. 25, 1972; 38 FR 29798, Oct. 29, 1973]

§ 900.3 Proposals.

(a) A marketing agreement or a marketing order may be proposed by the Secretary or by any other person. If any person other than the Secretary proposes a marketing agreement or marketing order, he shall file with the Administrator a written application, together with at least four copies of the proposal, requesting the Secretary to hold a hearing upon the proposal. Upon receipt of such proposal, th[illegible]inistrator shall cause such investigation to be made and such consideration thereof to be given as, in his opinion, are warranted. If the investigation and consideration lead the Administrator to conclude that the proposed marketing agreement or marketing order will not tend to effectuate the declared policy of the Act, or that for other proper reasons a hearing should not be held on the proposal, he shall deny the application, and promptly notify the applicant of such denial, which notice shall be accompanied by a brief statement of the grounds for the denial.

(b) If the investigation and consideration lead the Administrator to conclude that the proposed marketing agreement or marketing order will tend to effectuate the declared policy of the Act, or if the Secretary desires to propose a marketing agreement or marketing order, he shall sign and cause to be served a notice of hearing, as provided in this subpart.

§ 900.4 Institution of proceeding.

(a) *Filing and contents of the notice of hearing.* The proceeding shall be instituted by filing the notice of hearing with the hearing clerk. The notice of hearing shall contain a reference to the authority under which the marketing agreement or marketing order is proposed; shall define the scope of the hearing as specifically as may be practicable; shall contain either the terms or substance of the proposed marketing agreement or marketing order or a description of the subjects and issues involved and shall state the industry, area, and class of persons to be regulated, the time and place of such hearing, and the place where copies of such proposed marketing agreement or marketing order may be obtained or examined. The time of the hearing shall not be less than 15 days after the date of publication of the notice in the FEDERAL REGISTER, as provided in this subpart, unless the Administrator shall determine that an emergency exists which requires a shorter period of notice, in which case the period of notice shall be that which the Administrator may determine to be reasonable in the circumstances: *Provided,* That, in the case of hearings on amendments to marketing agreements or marketing orders, the time of the hearing may be less than 15 days but shall not be less than 3 days after the date of publication of the notice in the FEDERAL REGISTER.

(b) *Giving notice of hearing and supplemental publicity.* (1) The Administrator shall give or cause to be given notice of hearing in the following manner:

(i) By publication of the notice of hearing in the FEDERAL REGISTER;

(ii) By mailing a true copy of the notice of hearing to each of the persons known to the Administrator, to be interested therein;

(iii) By issuing a press release containing the complete text or a summary of the contents of the notice of hearing and making the same available to such newspapers in the area proposed to be subjected to regulation as reasonably will tend to bring the notice to the attention of the persons interested therein;

(iv) By forwarding copies of the notice of hearing addressed to the governors of such of the several States of the United States and to executive heads of such of the Territories and possessions of the United States as the Administrator, having due regard for the subject matter of the proposal and the public interest, shall determine, should be notified.

(2) Legal notice of the hearing shall be deemed to be given if notice is given in the manner provided by paragraph (b)(1)(i) of this section; and failure to give notice in the manner provided in paragraph (b)(1)(ii), (iii), and (iv) of this section shall not affect the legality of the notice.

(c) *Record of notice and supplemental publicity.* There shall be filed with the hearing clerk or submitted to the judge at the hearing an affidavit or certificate of the person giving the notice provided in (b)(1)(iii) and (iv) of this section. In regard to the provisions relating to mailing in (b)(1)(ii) of this section, a determination by the Administrator that such provisions have been complied with shall be filed with the hearing clerk or submitted to the judge at the hearing. In the alternative, if notice is not given in the manner provided in (b)(1)(ii), (iii), and (iv) of this section there shall be filed with the hearing clerk or submitted to the judge at the hearing a determination by the Administrator that such notice is impracticable, unnecessary, or contrary to the public interest with a brief statement of the reasons for such determination. Determinations by the Administrator as herein provided shall be final.

§ 900.5 Docket number.

Each proceeding, immediately following its institution, shall be assigned a docket number by the hearing clerk and thereafter the proceeding may be referred to by such number.

§ 900.6 Judges.

(a) *Assignment.* No judge who has any pecuniary interest in the outcome of a proceeding shall serve as judge in such proceeding.

(b) *Powers of judges.* Subject to review by the Secretary, as provided elsewhere in this subpart, the judge, in any proceeding, shall have power to:

(1) Rule upon motions and requests;

(2) Change the time and place of hearing, and adjourn the hearing from time to time or from place to place;

(3) Administer oaths and affirmations and take affidavits;

(4) Examine and cross-examine witnesses and receive evidence;

(5) Admit or exclude evidence;

(6) Hear oral argument on facts or law;

(7) Do all acts and take all measures necessary for the maintenance of order at the hearing and the efficient conduct of the proceeding.

(c) *Who may act in absence of judge.* In case of the absence of the judge or his inability to act, the powers and duties to be performed by him under this part in connection with a proceeding may, without abatement of the proceeding unless otherwise ordered by the Secretary, be assigned to any other judge.

(d) *Disqualification of judge.* The judge may at any time withdraw as judge in a proceeding if he deems himself to be disqualified. Upon the filing by an interested person in good faith of a timely and sufficient affidavit of personal bias or disqualification of a judge, the Secretary shall determine the matter as a part of the record and decision in the proceeding, after making such investigation or holding such hearings, or both, as he may deem appropriate in the circumstances.

§ 900.7 Motions and requests.

(a) *General.* All motions and requests shall be filed with the hearing clerk, except that those made during the course of the hearing may be filed with the judge or may be stated orally and made a part of the transcript.

Except as provided in § 900.15(b) such motions and requests shall be addressed to, and ruled on by, the judge if made prior to his certification of the transcript pursuant to § 900.10 or by the Secretary if made thereafter.

(b) *Certification to Secretary.* The judge may in his discretion submit or certify to the Secretary for decision any motion, request, objection, or other question addressed to the judge.

§ 900.8 Conduct of the hearing.

(a) *Time and place.* The hearing shall be held at the time and place fixed in the notice of hearing, unless the judge shall have changed the time or place, in which event the judge shall file with the hearing clerk a notice of such change, which notice shall be given in the same manner as provided in § 900.4 (relating to the giving of notice of the hearing): *Provided,* That, if the change in time or place of hearing is made less than 5 days prior to the date previously fixed for the hearing, the judge, either in addition to or in lieu of causing the notice of the change to be given, shall announce, or cause to be announced, the change at the time and place previously fixed for the hearing.

(b) *Appearances*—(1) *Right to appear.* At the hearing, any interested person shall be given an opportunity to appear, either in person or through his authorized counsel or representative, and to be heard with respect to matters relevant and material to the proceeding. Any interested person who desires to be heard in person at any hearing under these rules shall, before proceeding to testify, state his name, address, and occupation. If any such person is appearing through a counsel or representative, such person or such counsel or representative shall, before proceeding to testify or otherwise to participate in the hearing, state for the record the authority to act as such counsel or representative, and the names and addresses and occupations of such person and such counsel or representative. Any such person or such counsel or representative shall give such other information respecting his appearance as the judge may request.

(2) *Debarment of counsel or representative.* Wherever, while a proceeding is pending before him, the judge finds that a person, acting as counsel or representative for any person participating in the proceeding, is guilty of unethical or unprofessional conduct, the judge may order that such person be precluded from further acting as counsel or representative in such proceeding. An appeal to the Secretary may be taken from any such order, but the proceeding shall not be delayed or suspended pending disposition of the appeal: *Provided,* That the judge may suspend the proceeding for a reasonable time for the purpose of enabling the client to obtain other counsel or other representative.

In case the judge has ordered that a person be precluded from further acting as counsel or representative in the proceeding, the judge, within a reasonable time thereafter shall submit to the Secretary a report of the facts and circumstances surrounding such order and shall recommend what action the Secretary should take respecting the appearance of such person as counsel or representative in other proceedings before the Secretary. Thereafter the Secretary may, after notice and an opportunity for hearing, issue such order, respecting the appearance of such person as counsel or representative in proceedings before the Secretary, as the Secretary finds to be appropriate.

(3) *Failure to appear.* If any interested person fails to appear at the hearing, he shall be deemed to have waived the right to be heard in the proceeding.

(c) *Order of procedure.* (1) The judge shall, at the opening of the hearing prior to the taking of testimony, have noted as part of the record the notice of hearing as filed with the Office of the Federal Register and the affidavit or certificate of the giving of notice or the determination provided for in § 900.4(c).

(2) Evidence shall then be received with respect to the matters specified in the notice of the hearing in such order as the judge shall announce.

(d) *Evidence*—(1) *In general.* The hearing shall be publicly conducted, and the testimony given at the hearing shall be reported verbatim.

Every witness shall, before proceeding to testify, be sworn or make affirmation. Cross-examination shall be permitted to the extent required for a full and true disclosure of the facts.

When necessary, in order to prevent undue prolongation of the hearing, the judge may limit the number of times any witness may testify to the same matter or the amount of corroborative or cumulative evidence.

The judge shall, insofar as practicable, exclude evidence which is immaterial, irrelevant, or unduly repetitious, or which is not of the sort upon which responsible persons are accustomed to rely.

(2) *Objections.* If a party objects to the admission or rejection of any evidence or to any other ruling of the judge during the hearing, he shall state briefly the grounds of such objection, whereupon an automatic exception will follow if the objection is overruled by the judge. The transcript shall not include argument or debate thereon except as ordered by the judge. The ruling of the judge on any objection shall be a part of the transcript.

Only objections made before the judge may subsequently be relied upon in the proceeding.

(3) *Proof and authentication of official records or documents.* An official record or document, when admissible for any purpose, shall be admissible as evidence without the production of the person who made or prepared the same. Such record or document shall, in the discretion of the judge, be evidenced by an official publication thereof or by a copy attested by the person having legal custody thereof and accompanied by a certificate that such person has the custody.

(4) *Exhibits.* All written statements, charts, tabulations, or similar data offered in evidence at the hearing shall, after identification by the proponent and upon satisfactory showing of the authenticity, relevancy, and materiality of the contents thereof, be numbered as exhibits and received in evidence and made a part of the record. Such exhibits shall be submitted in quadruplicate and in documentary form. In case the required number of copies is not made available, the judge shall exercise his discretion as to whether said exhibits shall, when practicable, be read in evidence or whether additional copies shall be required to be submitted within a time to be specified by the judge. If the testimony of a witness refers to a statute, or to a report or document (including the record of any previous hearing) the judge, after inquiry relating to the identification of such statute, report, or document, shall determine whether the same shall be produced at the hearing and physically be made a part of the evidence as an exhibit, or whether it shall be incorporated into the evidence by reference. If relevant and material matter offered in evidence is embraced in a report or document (including the record of any previous hearing) containing immaterial or irrelevant matter, such immaterial or irrelevant matter shall be excluded and shall be segregated insofar as practicable, subject to the direction of the judge.

(5) *Official notice.* Official notice may be taken of such matters as are judicially noticed by the courts of the United States and of any other matter of technical, scientific or commercial fact of established character: *Provided,* That interested persons shall be given adequate notice, at the hearing or subsequent thereto, of matters so noticed and shall be given adequate opportunity to show that such facts are inaccurate or are erroneously noticed.

(6) *Offer of proof.* Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the transcript. The offer of proof shall consist of a brief statement describing the evidence to be offered. If the evidence consists of a brief oral statement or of an exhibit, it shall be inserted into the transcript in toto. In such event, it shall be considered a part of the transcript if the Secretary decides that the judge's ruling in excluding the evidence was erroneous. The judge shall not allow the insertion of such evidence in toto if the taking of such evidence will consume a considerable length of time at the hearing. In the latter event, if the Secretary decides that the judge erred in excluding the evidence, and that such error was substantial, the hearing shall be reopened to permit the taking of such evidence.

[25 FR 5907, June 28, 1960, as amended at 37 FR 1103, Jan. 25, 1972]

§ 900.9 Oral and written arguments.

(a) *Oral argument before judge.* Oral argument before the judge shall be in the discretion of the judge. Such argument, when permitted, may be limited by the judge to any extent that he finds necessary for the expe-

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ditious disposition of the proceeding and shall be reduced to writing and made part of the transcript.

(b) *Briefs, proposed findings and conclusions.* The judge shall announce at the hearing a reasonable period of time within which interested persons may file with the hearing clerk proposed findings and conclusions, and written arguments or briefs, based upon the evidence received at the hearing, citing, where practicable, the page or pages of the transcript of the testimony where such evidence appears. Factual material other than that adduced at the hearing or subject to official notice shall not be alluded to therein, and, in any case, shall not be considered in the formulation of the marketing agreement or marketing order. If the person filing a brief desires the Secretary to consider any objection made by such person to a ruling of the judge, as provided in § 900.8(d), he shall include in the brief a concise statement concerning each such objection, referring where practicable, to the pertinent pages of the transcript.

§ 900.10 Certification of the transcript.

The judge shall notify the hearing clerk of the close of a hearing as soon as possible thereafter and of the time for filing written arguments, briefs, proposed findings and proposed conclusions, and shall furnish the hearing clerk with such other information as may be necessary. As soon as possible after the hearing, the judge shall transmit to the hearing clerk an original and three copies of the transcript of the testimony and the original and all copies of the exhibits not already on file in the office of the hearing clerk. He shall attach to the original transcript of testimony his certificate stating that to the best of his knowledge and belief, the transcript is a true transcript of the testimony given at the hearing except in such particulars as he shall specify; and that the exhibits transmitted are all the exhibits as introduced at the hearing with such exceptions as he shall specify. A copy of such certificate shall be attached to each of the copies of the transcript of testimony. In accordance with such certificate the hearing clerk shall note upon the official record copy, and cause to be noted on other copies, of the transcript each correction detailed therein by adding or crossing out (but without obscuring the text as originally transcribed) at the appropriate place any words necessary to make the same conform to the correct meaning, as certified by the judge. The hearing clerk shall obtain and file certifications to the effect that such corrections have been effected in copies other than the official record copy.

§ 900.11 Copies of the transcript.

(a) During the period in which the proceeding has an active status in the Department, a copy of the transcript and exhibits shall be kept on file in the office of the hearing clerk, where it shall be available for examination during official hours of business. Thereafter said transcript and exhibits shall be made available by the hearing clerk for examination during official hours of business after prior request and reasonable notice to the hearing clerk.

(b) If a personal copy of the transcript is desired, such copy may be obtained upon written application filed with the reporter and upon payment of fees at the rate (if any) provided in the contract between the reporter and the Secretary.

§ 900.12 Administrator's recommended decision.

(a) *Preparation.* As soon as practicable following the termination of the period allowed for the filing of written arguments or briefs and proposed findings and conclusions the Administrator shall file with the hearing clerk a recommended decision.

(b) *Contents.* The Administrator's recommended decision shall include: (1) A preliminary statement containing a description of the history of the proceedings, a brief explanation of the material issues of fact, law, or discretion presented on the record, and proposed findings and conclusions with respect to such issues as well as the reasons or basis therefor; (2) A ruling upon each proposed finding or conclusion submitted by interested persons; and (3) An appropriate proposed marketing agreement or marketing order effectuating his recommendations.

(c) *Exceptions to recommended decision.* Immediately following the filing of his recommended decision, the Administrator shall give notice thereof, and opportunity to file exceptions thereto by publication in the FEDERAL REGISTER. Within a period of time specified in such notice any interested person may file with the hearing clerk exceptions to the Administrator's proposed marketing agreement or marketing order, or both, as the case may be, and a brief in support of such exceptions. Such exceptions shall be in writing, shall refer, where practicable, to the related pages of the transcript and may suggest appropriate changes in the proposed marketing agreement or marketing order.

(d) *Omission of recommended decision.* The procedure provided in this section may be omitted only if the Secretary finds on the basis of the record that due and timely execution of his functions imperatively and unavoidably requires such omission.

§ 900.13 Submission to Secretary.

Upon the expiration of the period allowed for filing exceptions or upon request of the Secretary, the hearing clerk shall transmit to the Secretary the record of the proceeding. Such record shall include: all motions and requests filed with the hearing clerk and rulings thereon; the certified transcripts; any proposed findings or conclusions or written arguments or briefs that may have been filed; the Administrator's recommended decision, if any, and such exceptions as may have been filed.

§ 900.13a Decision by Secretary.

After due consideration of the record, the Secretary shall render a decision. Such decision shall become a part of the record and shall include (a) a statement of his findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law or discretion presented on the record, (b) a ruling upon each proposed finding and proposed conclusion not previously ruled upon in the record, (c) a ruling upon each exception filed by interested persons and (d) either (1) a denial of the proposal to issue a marketing agreement or marketing order or (2) a marketing agreement and, if the findings upon the record so warrant, a marketing order, the provisions of which shall be set forth directly or by reference, regulating the handling of the commodity or product in the same manner and to the same extent as such marketing agreement, which order shall be complete except for its effective date and any determinations to be made under § 900.14(b) or § 900.14(c): *Provided*, That such marketing order shall not be executed, issued, or made effective until and unless the Secretary determines that the requirements of § 900.14(b) or § 900.14(c) have been met.

§ 900.14 Execution of marketing agreement and issuance of marketing order.

(a) *Execution of marketing agreement.* If the Secretary has approved a marketing agreement, as provided in § 900.13a, the Administrator shall cause copies thereof to be distributed for execution by the handlers eligible to become parties thereto. If and when such number of the handlers as the Secretary shall deem to be sufficient shall have executed the marketing agreement, the Secretary shall execute the same, and notice of its effective date shall be mailed by the hearing clerk to each person signatory thereto. A marketing agreement shall be effective and binding upon any party thereto even though such party may not have received the notice provided for in this paragraph, or the hearing clerk may have failed to mail such notice.

(b) *Issuance of marketing order with marketing agreement.* Whenever, as provided in paragraph (a) of this section, the Secretary executes a marketing agreement, and handlers also have executed the same as provided in section 8c(8) of the Act, he shall, if he finds that it will tend to effectuate the purposes of the act, issue and make effective the marketing order, if any, which was filed as a part of his decision pursuant to § 900.13a: *Provided*, That the issuance of such order shall have been approved or favored by producers as required by section 8c(8) of the Act.

(c) *Issuance of marketing order without marketing agreement.* If, despite the failure or refusal of handlers to sign the marketing agreement, as provided in section 8c(8) of the Act, the Secretary makes the determinations required under section 8c(9) of the Act, the Secretary shall issue and make effective the marketing order, if any, which was filed as a part of his decision pursuant to § 900.13a.

(d) *Effective date of marketing order.* No marketing order shall become effective less than 30 days after its publication in the FEDERAL REGISTER, unless the Secretary, upon good cause found and published with the order, fixes an earlier effective date therefor: *Provided*, That no marketing order shall become effective as to any person sought to be charged thereunder before either (1) it has been filed with the Office of the Federal Register, or (2) such person has received actual notice of the issuance and terms of the marketing order.

(e) *Notice of issuance.* After issuance of a marketing order, such order shall be filed with the hearing clerk, and notice thereof, together with notice of the effective date, shall be given by publication in the FEDERAL REGISTER. (7 U.S.C. 610(c))

§ 900.15 Filing; extensions of time; effective date of filing; and computation of time.

(a) *Filing, number of copies.* Except as is provided otherwise in this subpart, all documents or papers required or authorized by the foregoing provisions of this subpart to be filed with the hearing clerk shall be filed in quadruplicate. Any document or paper, so required or authorized to be filed with the hearing clerk, shall, during the course of an oral hearing, be filed with the judge. The provisions of this subpart concerning filing with the hearing clerk of hearing notices, recommended and final decisions, marketing agreements and orders, and all documents described in § 900.17 shall be met by filing a true copy thereof with the hearing clerk.

(b) *Extensions of time.* The time for the filing of any document or paper required or authorized by the foregoing provisions of this subpart to be filed may be extended by the judge (before the record is certified by the judge) or by the Administrator (after the record is so certified by the judge but

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before it is transmitted to the Secretary), or by the Secretary (after the record is transmitted to the Secretary) upon request filed, and if, in the judgment of the judge, Administrator, or the Secretary, as the case may be, there is good reason for the extension. All rulings made pursuant to this paragraph shall be filed with the hearing clerk.

(c) *Effective date of filing.* Any document or paper required or authorized by the foregoing provisions of this subpart to be filed shall be deemed to be filed when it is postmarked or when it is received by the hearing clerk.

(d) *Computation of time.* Sundays and Federal holidays shall be included in computing the time allowed for the filing of any document or paper: *Provided*, That, when such time expires on a Sunday or legal holiday, such period shall be extended to include the next following business day.

[25 FR 5907, June 28, 1960, as amended at 30 FR 254, Jan. 9, 1965]

§ 900.16 Ex parte communications.

(a) At no stage of the proceeding following the issuance of a notice of hearing and prior to the issuance of the Secretary's decision therein shall an employee of the Department who is or may reasonably be expected to be involved in the decisional process of the proceeding discuss ex parte the merits of the proceeding with any person having an interest in the proceeding or with any representative of such person: *Provided*, That procedural matters and status reports shall not be included within this limitation; and *Provided further*, That an employee of the Department who is or may reasonably be expected to be involved in the decisional process of the proceeding may discuss the merits of the proceeding with such a person if all parties known to be interested in the proceeding have been given notice and an opportunity to participate. A memorandum of any such discussion shall be included in the record of the proceeding.

(b) No person interested in the proceeding shall make or knowingly cause to be made to an employee of the Department who is or may reasonably be expected to be involved in the decisional process of the proceeding an ex parte communication relevant to the merits of the proceeding except as provided in paragraph (a) of this section.

(c) If an employee of the Department who is or may reasonably be expected to be involved in the decisional process of the proceeding receives or makes a communication prohibited by this section, the Department shall place on the public record of the proceeding:

(1) All such written communications;

(2) Memoranda stating the substance of all such oral communications; and

(3) All written responses, and memoranda stating the substance of all oral responses thereto.

(d) Upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this section, the Department may, to the extent consistent with the interest of justice and the policy of the underlying statute, take whatever steps are deemed necessary to nullify the effect of such communication.

(e) For the purposes of this section, "ex parte communication" means an oral or written communication not on the public record with respect to which reasonable prior notice to all interested parties is not given, but which shall not include requests for status reports (including requests on procedural matters) on any proceeding.

[42 FR 10833, Feb. 24, 1977]

§ 900.17 Additional documents to be filed with hearing clerk.

In addition to the documents or papers required or authorized by the foregoing provisions of this subpart to be filed with the hearing clerk, the hearing clerk shall receive for filing and shall have custody of all papers, reports, records, orders, and other documents which relate to the administration of any marketing agreement or marketing order and which the Secretary is required to issue or to approve.

§ 900.18 Hearing before Secretary.

The Secretary may act in the place and stead of a judge in any proceeding under this subpart. When he so acts the hearing clerk shall transmit the record to the Secretary at the expiration of the period provided for the filing of proposed findings of fact, conclusions and orders, and the Secretary shall thereupon, after due consideration of the record, issue his final decision in the proceeding: *Provided*, That he may issue a tentative decision in which event the parties shall be afforded an opportunity to file exceptions before the issuance of the final decision.

Subpart—Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Marketing Orders

AUTHORITY: Sec. 5, 49 Stat. 753, as amended; 7 U.S.C. 608c.

§ 900.50 Words in the singular form.

Words in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 900.51 Definitions.

As used in this subpart, the terms as defined in the Act shall apply with equal force and effect. In addition, unless the context otherwise requires:

(a) The term "Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. and Sup. 601);

(b) The term "Department" means the United States Department of Agriculture;

(c) The term "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead;

(d) The terms "administrative law judge" or "judge" means any Administrative Law Judge, appointed pursuant to 5 U.S.C. 3105, and assigned to the proceeding involved;

(e) The term "Administrator" means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in his stead.

(f) [Reserved]

(g) The term "FEDERAL REGISTER" means the publication provided for by the Act of July 26, 1935 (49 Stat. 500), and acts supplementary thereto and amendatory thereof;

(h) The term "marketing order" means any order or any amendment thereto which may be issued pursuant to section 8c of the Act;

(i) The term "handler" means any person who, by the terms of a marketing order, is subject thereto, or to whom a marketing order is sought to be made applicable;

(j) The term "proceeding" means a proceeding before the Secretary arising under subsection (15)(A) of section 8c of the Act;

(k) The term "hearing" means that part of the proceeding which involves the submission of evidence;

(l) The term "party" includes the Department;

(m) The term "hearing clerk" means the hearing clerk, United States Department of Agriculture, Washington, D.C.;

(n) [Reserved]

(o) The term "decision" means the judge's initial decision in proceedings subject to 5 U.S.C. 556 and 557, and includes the judge's (1) findings of fact and conclusions with respect to all material issues of fact, law or discretion as well as the reasons or basis thereof, (2) order, and (3) rules on findings, conclusions and orders submitted by the parties;

(p) The term "petition" includes an amended petition.

[25 FR 5907, June 28, 1960, as amended at 26 FR 7796, Aug. 22, 1961. 28 FR 579, Jan. 23, 1963; 37 FR 8059, Apr. 25, 1972; 38 FR 29798, Oct. 29, 1973]

§ 900.52 Institution of proceeding.

(a) *Filing and service of petition.* Any handler desiring to complain that any marketing order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law, shall file with the hearing clerk, in quadruplicate, a petition in writing addressed to the Secretary. Promptly upon receipt of the petition, the hearing clerk shall transmit a true copy thereof to the Administrator and the General Counsel, respectively.

(b) *Contents of petition.* A petition shall contain:

(1) The correct name, address, and principal place of business of the petitioner. If petitioner is a corporation, such fact shall be stated, together with the name of the State of incorporation, the date of incorporation, and the names, addresses, and respective positions held by its officers; if an unincorporated association, the names and addresses of its officers, and the respective positions held by them; if a partnership, the name and address of each partner;

(2) Reference to the specific terms or provisions of the order, or the interpretation or application thereof, which are complained of;

(3) A full statement of the facts (avoiding a mere repetition of detailed evidence) upon which the petition is based, and which it is desired that the Secretary consider, setting forth clearly and concisely the nature of the petitioner's business and the manner in which petitioner claims to be affected by the terms or provisions of the order or the interpretation or application thereof, which are complained of;

(4) A statement of the grounds on which the terms or provisions of the order, or the interpretation or application thereof, which are complained of, are challenged as not in accordance with law;

(5) Prayers for the specific relief which the petitioner desires the Secretary to grant;

(6) An affidavit by the petitioner, or if the petitioner is not an individual, by an officer of the petitioner having knowledge of the facts stated in the petition, verifying the petition and stating that it is filed in good faith and not for purposes of delay.

(c) *Motion to dismiss petition*—(1) *Filing, contents, and responses thereto.* If the Administrator is of the opinion that the petition, or any portion thereof, does not substantially comply, in form or content, with the act or with the requirements of paragraph (b) of this section, or is not filed in good faith, or is filed for purposes of delay, he may, within thirty days after the filing of the petition, file with the Hearing Clerk a motion to dismiss the petition, or any portion thereof, on one or more of the grounds stated in this paragraph. Such motion shall specify the grounds of objection to the petition and if based, in whole or in part, on an allegations of fact not appearing on the face of the petition, shall be accompanied by appropriate affidavits or documentary evidence substantiating such allegations of fact. The motion may be accompanied by a memorandum of law. Upon receipt of such motion, the Hearing Clerk shall cause a copy thereof to be served upon the petitioner, together with a notice stating that all papers to be submitted in opposition to such motion including any memorandum of law, must be filed by the petitioner with the Hearing Clerk not later than 20 days after the service of such notice upon the petitioner. Upon the expiration of the time specified in such notice, or upon receipt of such papers from the petitioner, the Hearing Clerk shall transmit all papers which have been filed in connection with the motion to the Judge for his consideration.

(2) *Decision by Administrative Law Judge.* The Judge, after due consideration, shall render a decision upon the motion stating the reasons for his action. Such decision shall be in the form of an order and shall be filed with the Hearing Clerk who shall cause a copy thereof to be served upon the petitioner and a copy thereof to be transmitted to the Administrator. Any such order shall be final unless appealed pursuant to § 900.65: *Provided,* That within 20 days following the service upon the petitioner of a copy of the order of the Judge dismissing the petition, or any portion thereof, on the ground that it does not substantially comply in form and content with the act or with paragraph (b) of this section, the petitioner shall be permitted to file an amended petition.

(3) *Oral argument.* Unless a written application for oral argument is filed by a party with the hearing clerk not later than the time fixed for filing papers in opposition to the motion, it shall be considered that the party does not desire oral argument. The granting of a request to make oral argument shall rest in the discretion of the Judge.

[25 FR 5907, June 28, 1960, as amended at 38 FR 29798, Oct. 29, 1973]

§ 900.52a Answer to petition.

(a) *Time of filing.* Within 30 days after the filing of the petition, the Administrator shall file an answer thereto: *Provided,* That if a motion to dismiss the petition, in whole or in part, is made pursuant to § 900.52(c), the answer shall be filed within 15 days after the filing of an order of the administrative law judge denying the motion or granting the motion with respect to only a portion of the petition. The answer shall be filed with the hearing clerk who shall cause a copy thereof to be served promptly upon the petitioner.

(b) *Contents.* The answer shall specify which of the material allegations of fact or of law in the petition are controverted and which are not controverted. The answer also may contain affirmative allegations of fact constituting separate defenses and statements of objections to the sufficiency of the whole or any part of the petition.

[25 FR 5907, June 28, 1960]

§ 900.52b Amended pleadings.

At any time before the close of the hearing the petition or answer may be amended, but the hearing shall, at the request of the adverse party, be adjourned or recessed for such reasonable time as the judge may determine to be necessary to protect the interests of the parties. Amendments subsequent to the first amendment or subsequent to the filing of an answer may be made only with leave of the judge or with the written consent of the adverse party.

§ 900.53 Withdrawal of petition.

If, at any time after the petition is filed, the petitioner desires to withdraw the same, he shall file with the hearing clerk (or, if filed during the course of a hearing, with the judge) a written request for permission to withdraw. The judge may, in his discretion, thereupon dismiss the petition without further procedure: *Provided,* That, if the request to withdraw is filed after a hearing has been opened, permission to withdraw shall be granted only in exceptional circumstances.

§ 900.54 Docket number.

Each proceeding, immediately following its institution, shall be assigned a docket number by the hearing clerk and thereafter the proceeding may be referred to by such number.

§ 900.55 Judges.

(a) *Assignment.* No judge who has any pecuniary interest in the outcome of the proceeding, or who has participated in any investigation preceding the institution of the proceeding, shall serve as judge in such proceeding.

(b) *Conduct.* The judge shall conduct the proceeding in a fair and impartial manner and shall not discuss ex parte the merits of the proceeding with any person who is or who has been connected in any manner with the proceeding in an advocative or investigative capacity.

(c) *Powers of judges.* Subject to review by the Secretary, as provided elsewhere in this subpart, the judge shall have power to:

(1) Rule upon motions and requests;

(2) Adjourn the hearing from time to time, and change the time and place of hearing;

(3) Administer oaths and affirmations and take affidavits;

(4) Issue subpenas, under the facsimile signature of the Secretary, requiring the attendance and testimony of witnesses and the production of books, records, contracts, papers, and other documentary evidence;

(5) Examine witnesses and receive evidence;

(6) Take or order, under the facsimile signature of the Secretary, the taking of depositions;

(7) Admit or exclude evidence;

(8) Hear oral argument on facts or law;

(9) Consolidate hearings upon two or more petitions pertaining to the same order;

(10) Do all acts and take all measures necessary for the maintenance of order at the hearing and the efficient conduct of the proceeding.

(d) *Who may act in absence of judge.* In case of the absence of the judge or his inability to act, the powers and duties to be performed by him under these rules of practice in connection with a proceeding may, without abatement of the proceeding unless otherwise ordered by the Secretary, be assigned to any other judge.

(e) *Disqualification of judge.* The judge may at any time withdraw as judge in a proceeding if he deems himself to be disqualified. Upon the filing by an interested person in good faith of a timely and sufficient affidavit of personal bias or disqualification of a judge, the Secretary shall determine the matter as a part of the record and decision in the proceeding, after making such investigation or holding such hearings, or both, as he may deem appropriate in the circumstances.

§ 900.56 Consolidated hearings.

At the discretion of the judge, hearings upon two or more petitions pertaining to the same order may be consolidated, and the evidence taken at such consolidated hearing may be embodied in a single record.

§ 900.57 Intervention.

Intervention in proceedings subject to this subpart shall not be allowed, except that, in the discretion of the Secretary or the judge, any person (other than the petitioner) showing a substantial interest in the outcome of a proceeding shall be permitted to participate in the oral argument and to file a brief.

900.58 Prehearing conferences.

In any proceeding in which it appears that such procedure will expedite the proceeding, the judge, at any time prior to the commencement of or during the course of the hearing, may request the parties or their counsel to appear at a conference before him to consider (a) the simplification of issues; (b) the possibility of obtaining stipulations of fact and of documents which will avoid unnecessary proof; (c) the limitation of the number of expert or other witnesses; and (d) such other matters as may expedite and aid in the disposition of the proceeding. No transcript of such conference shall be made, but the judge shall prepare and file for the record a written summary of the action taken at the conference, which shall incorporate any written stipulations or agreements made by the parties at the conference or as a result of the conference. If the circumstances are such that a conference is impracticable, the judge may request the parties to correspond with him for the purpose of accomplishing any of the objects set forth in this section. The judge shall forward copies of letters and documents to the parties as the circumstances require. Correspondence in such negotiations shall not be a part of the record, but the judge shall submit a written summary for the record if any action is taken.

§ 900.59 Motions and requests.

(a) *General.* All motions and requests shall be filed with the hearing clerk, except that those made during the course of an oral hearing may be filed with the judge or may be stated orally and made a part of the transcript.

The judge is authorized to rule upon all motions and requests filed or made prior to the transmittal by the hearing clerk to the Secretary of the record as provided in this subpart. The Secretary shall rule upon all motions and requests filed after that time.

(b) *Certification of motions.* The submission or certification of any motion, request, objection, or other question to the Secretary shall be in the discretion of the judge.

[25 FR 5907, June 28, 1960, as amended at 38 FR 29798, Oct. 29, 1973]

§ 900.60 Oral hearings before judge.

(a) *Time and place.* The judge shall set a time and place for hearing and shall file with the hearing clerk a notice stating the time and place of hearing. If any change in the time or place of hearing becomes necessary, it shall be made by the judge, who, in such event, shall file with the hearing clerk a notice of the change. Such notice shall be served upon the parties, unless it is made during the course of an oral hearing and made a part of the transcript.

(b) *Appearances*—(1) *Representation.* In any proceeding under the act, the parties may appear in person or by counsel or other representative. The Department, if represented by counsel, shall be represented by

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an attorney assigned by the General Counsel of the Department, and such attorney shall present or supervise the presentation of the position of the Department.

(2) *Debarment of counsel or representative.* Whenever, while a proceeding is pending before him, the judge finds that a person acting as counsel or representative for any party to the proceeding is guilty of unethical or unprofessional conduct, the judge may order that such person be precluded from further acting as counsel or representative in such proceeding. An appeal to the Secretary may be taken from any such order, but the proceeding shall not be delayed or suspended pending disposition of the appeal: *Provided,* That the judge may suspend the proceeding for a reasonable time for the purpose of enabling the client to obtain other counsel or representative.

In case the judge has issued an order precluding a person from further acting as counsel or representative in the proceeding, the judge, within a reasonable time thereafter, shall submit to the Secretary a report of the facts and circumstances surrounding the issuance of the order and shall recommend what action the Secretary should take respecting the appearance of such person as counsel or representative in other proceedings before the Secretary. Thereafter, the Secretary may, after notice and an opportunity for hearing, issue such order respecting the appearance of such person as counsel or representative in proceedings before the Secretary as the Secretary finds to be appropriate.

(3) *Failure to appear.* If the petitioner, after being duly notified, fails to appear at the hearing, he shall be deemed to have authorized the dismissal of the proceeding, without further procedure, and with or without prejudice as the judge may determine. In the event that the petitioner appears at the hearing and no representative of the Department appears, the judge shall proceed ex parte to hear the evidence of the petitioner: *Provided,* That failure on the part of such representative of the Department to appear at a hearing shall not be deemed to be waiver of the Department's right to file suggested findings of fact, conclusions and order; to be served with a copy of the judge's initial decision and to appeal to the Secretary with respect thereto.

(c) *Order of proceeding.* Except as may be determined otherwise by the judge, the petitioner shall proceed first at the hearing.

(d) *Evidence*—(1) *In general.* The hearing shall be publicly conducted, and the testimony given at the hearing shall be reported verbatim.

The testimony of witnesses at a hearing shall be upon oath or affirmation and subject to cross-examination.

Any witness may, in the discretion of the judge, be examined separately and apart from all other witnesses except those who may be parties to the proceeding.

The judge shall exclude, insofar as practicable, evidence which is immaterial, irrelevant, or unduly repetitious, or which is not of the sort upon which responsible persons are accustomed to rely.

(2) *Objections.* If a party objects to the admission or rejection of any evidence or to the limitation of the scope of any examination or cross-examination, or any other ruling of the judge, he shall state briefly the grounds of such objection, whereupon an automatic exception will follow which may be pursued in an appeal pursuant to § 900.65 by the party adversely affected by the judge's ruling.

(3) *Depositions.* The deposition of any witness shall be admitted, in the manner hereinafter provided in and subject to the provisions of § 900.61.

(4) *Affidavits.* Except as is otherwise provided in this subpart, affidavits may be admitted only if the evidence is otherwise admissible and the parties agree (which may be determined by their failure to make timely objections) that affidavits may be used.

(5) *Proof and authentication of official records or documents.* An official record or document, when admissible for any purpose, shall be admissible in evidence without the production of the person who made or prepared the same. Such record or document shall, in the discretion of the judge, be evidenced by an official publication thereof or by a copy attested by the person having legal custody thereof and accompanied by a certificate that such person has the custody.

(6) *Exhibits.* All written statements, charts, tabulations, or similar data offered in evidence at the hearing shall, after identification by the proponent and upon a satisfactory showing of the admissibility of the contents thereof, be numbered as exhibits and received in evidence and made a part of the record. Except where the judge finds that the furnishing of copies is impracticable, a copy of each exhibit, in addition to the original, shall be filed with the judge for the use of each other party to the proceeding. The judge shall advise the parties as to the exact number of copies which will be required to be filed and shall make and have noted on the record the proper distribution of the copies.

If the testimony of a witness refers to a statute, or to a report, document, or transcript, the judge after inquiry relating to the identification of such statute, report, document, or transcript, shall determine whether the same shall be produced at the hearing and physically be made a part of the evidence as an exhibit, or whether it shall be incorporated into the evidence by reference. If relevant and material matter offered in evidence is embraced in a report, document, or transcript containing immaterial or irrelevant matter, such immaterial or irrelevant matter shall be excluded and shall be segregated insofar as practicable, subject to the direction of the judge.

(7) *Official notice.* Official notice will be taken of such matters as are judicially noticed by the courts of the United States and of any other matter of technical, scientific, or commercial fact of established character: *Provided,* That the parties shall be given adequate notice, at the hearing or by reference in the judge's report or the tentative order or otherwise, of matters so noticed, and (except where official notice is taken, for the first time in the proceeding, in the final order) shall be given adequate opportunity to show that such facts are erroneously noticed.

(8) *Offer of proof.* Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the transcript. The offer of proof shall consist of a brief statement describing the evidence to be offered. If the evidence consists of a brief oral statement or of an exhibit, it shall be inserted into the transcript in toto. In such event, it shall be considered a part of the transcript if the Secretary decides that the judge's ruling in excluding the evidence was erroneous. The judge shall not allow the insertion of such evidence in toto if the taking of such evidence will consume a considerable length of time at the hearing. In the latter event, if on appeal the Secretary decides that the judge erred in excluding the evidence, and that such error was substantial, the hearing shall be reopened to permit the taking of such evidence.

(e) [Reserved]

(f) *Transcript.* (1) During the period in which the proceeding has an active status the transcript and exhibits shall be kept on file in the office of the hearing clerk, where it shall be available for examination during official hours of business. Thereafter said transcript and exhibits shall be made available by the hearing clerk for examination during official hours of business after prior request and reasonable notice to the hearing clerk.

(2) If a personal copy of the transcript is desired, such copy may be obtained upon written application filed with the reporter, and upon payment of fees at the rate (if any) provided in the contract between the reporter and the Secretary.

[25 FR 5907, June 28, 1960, as amended at 38 FR 29798, Oct. 29, 1973]

§ 900.61 Depositions.

(a) *Procedure in lieu of deposition.* Before any party may have testimony taken by deposition, said party shall, if practicable, submit to the other party an affidavit which shall set forth the facts to which the witness would testify, if the deposition should be taken. If, after examination of such affidavit, the other party agrees, or (within 10 days after submission of the affidavit) fails to object, that the affidavit may be used in lieu of the deposition, the judge shall admit the affidavit in evidence and shall not order the deposition to be taken.

(b) *Application for taking deposition.* Upon the application of a party to the proceeding, the judge may, at any time after the filing of the moving paper, order, under the facsimile signature of the Secretary, the taking of testimony by deposition. The application shall be in writing and shall be filed with the hearing clerk and shall set forth: (1) The name and address of the proposed deponent; (2) the name and address of the person (referred to hereinafter in this section as the "officer"), qualified under the rules in this part to take depositions, before whom the proposed examination is to be made; (3) the proposed time and place of the examination, which shall be at least 15 days after the date of the mailing of the application; and (4) the reasons why such deposition should be taken.

(c) *Judge's order for taking deposition.* If, after the examination of the application, the judge is of the opinion that the deposition should be taken, he shall order its taking. The order shall be filed with the hearing clerk and shall be served upon the parties and shall state: (1) The time and place of the examination (which shall not be less than 10 days after the filing of the order); (2) the name of the officer before whom the examination is to be made; (3) the name of the deponent. The officer and the time and place need not be the same as those suggested in the application.

(d) *Qualifications of officer.* The deposition shall be taken before the judge or before an officer authorized by the law of the United States or by the law of the place of the examination to administer oaths, or before an officer authorized by the Secretary to administer oaths.

(e) *Procedure on examination.* The deponent shall be examined under oath or affirmation and shall be subject to cross-examination. The testimony of the deponent shall be recorded by the officer or by some person under his direction and in his presence. In lieu of oral examination, parties may transmit written interrogatories to the officer prior to the examination and the officer shall propound such interrogatories to the deponent.

The applicant must arrange for the examination of the witness either by oral examination or by written interrogatories. If it is found by the judge, upon the protest of a party to the proceeding, that such party has his residence and his place of business more than 100 miles from the place of the examination and that it would constitute an undue hardship upon such party to be represented at the examination, the applicant will be required to conduct the examination by means of interrogatories. When the examination is conducted by means of interrogatories, copies of the interrogatories shall be served upon the other parties to the proceeding at least five days prior to the date set for the examination, and the other parties shall be afforded an opportunity to file with the officer cross-interrogatories at any time prior to the time of the examination.

(f) *Certification by officer.* The officer shall certify on the deposition that the deponent was duly sworn by him and that the deposition is a true record of the deponent's testimony. He shall then securely seal the deposition, together with two copies thereof, in an envelope and mail the same by registered mail to the hearing clerk.

(g) *Use of depositions.* A deposition ordered and taken in accord with the provisions of this section may be used in a proceeding under the act if the judge finds that the evidence is otherwise admissible and (1) that the witness is dead; or (2) that the witness is at a distance greater than 100 miles from the place of hearing, unless it appears that the absence of the witness was procured by the party offering the deposition; or (3) that the witness is unable to attend or testify because of age, sickness, infirmity or imprisonment; or (4) that the party offering the deposition has endeavored to procure the attendance of the witness by subpena but has been unable to do so; or (5) that such exceptional circumstances exist as to make it desirable, in the interests of justice, to allow the deposition to be used. If a deposition has been taken, and the party upon whose application it was taken refuses to offer it in evidence, the other party may offer the deposition, or any part thereof, in evidence.

§ 900.62 Subpenas.

(a) *Issuance of subpenas.* The attendance of witnesses and the production of documentary evidence from any place in the United States on behalf of any party to the proceeding may, by subpena, be required at any designated place of hearing. Subpenas may be issued by the Secretary or by the judge, under the facsimile signature of the Secretary, upon a reasonable showing by the applicant of the grounds, necessity, and reasonable scope thereof.

(b) *Application for subpena duces tecum.* Subpenas for the production of documentary evidence, unless issued by the judge upon his own motion, shall be issued only upon a verified written application. Such application shall specify, as exactly as possible, the documents desired and shall show their competency, relevancy, and materiality and the necessity for their production.

(c) *Service of subpenas.* Subpenas may be served (1) by a United States Marshal or his deputy, or (2) by any other person who is not less than 18 years of age, or (3) by registering and mailing a copy of the subpena addressed to the person to be served at his or its last known residence or principal place of business or residence. Proof of service may be made by the return of service on the subpena by the United States Marshal or his deputy or, if served by an individual other than a United States Marshal or his deputy, by an affidavit of such person stating that he personally served a copy of the subpena upon the person named therein; or, if service was by registered mail, by an affidavit made by the person mailing the subpena that it was mailed as provided in this paragraph and by the signed return post-office receipt: *Provided,* That, if the subpena is issued on behalf of the Department, the return receipt without an affidavit of mailing shall be sufficient proof of service. In making personal service, the person making service shall leave a copy of the subpena with the person subpenaed; the original, bearing or accompanied by the required proof of service shall be returned to the official who issued the same.

§ 900.63 Fees and mileage.

Witnesses who are subpenaed and who appear in such proceeding, including witnesses whose depositions are taken, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and persons taking depositions shall be entitled to the same fees as are paid for like services in the courts of the United States, to be paid by the party at whose request the deposition is taken. Witness fees and mileage shall be paid by the party at whose instance the witnesses appear, and claims therefor, as to witnesses subpenaed on behalf of the Department, shall be proved before the person issuing the subpena and, as to witnesses subpenaed on behalf of any other party, shall be presented to such party.

§ 900.64 The Administrative Law Judge's Decision.

(a) *Corrections to and certification of transcript.* (1) At such time as the judge may specify, but not later than the time fixed for filing proposed findings of fact, conclusions and order, or briefs, as the case may be, the parties may file with the judge proposed corrections to the transcript. (2) As soon as practicable after the filing of proposed findings of fact, conclusions and order, or briefs, as the case may be, the judge shall file with the hearing clerk his certificate indicating any corrections to be made in the transcript, and stating that, to the best of his knowledge and belief, the transcript, as corrected, is a true, correct, and complete transcript of the testimony given at the hearing, and that the exhibits are all the exhibits properly a part of the hearing record. The original of such certificate shall be attached to the original transcript and a copy of such certificate shall be served upon each of the parties by the hearing clerk who shall also enter onto the transcript (without obscuring the text) any correction noted in the certification.

(b) *Proposed findings of fact, conclusions, and orders.* Within 10 days (unless the judge shall have announced at the hearing a shorter or longer period of time) after the transcript has been filed with the hearing clerk, as provided in paragraph (a) of this section, each party may file with the hearing clerk proposed findings of fact, conclusions, and order, based solely upon the evidence of record, and briefs in support thereof.

(c) *Administrative Law Judge's Decision.* The judge, within a reasonable time after the termination of the period allowed for the filing of proposed findings of fact, conclusions, and orders, and briefs in support thereof, shall prepare upon the basis of the record, and shall file with the hearing clerk, his initial decision, a copy of which shall be served by the hearing clerk, upon each of the parties. Such decision shall become final without further proceedings 35 days after the date of service thereof, unless there is an appeal to the Secretary by a party to the proceeding: *Provided, however,* That no decision shall be final for the purpose of judicial review except a final decision issued by the Secretary pursuant to an appeal by a party to the proceeding.

[25 FR 5907, June 28, 1960, as amended at 38 FR 29799, Oct. 29, 1973]

§ 900.65 Appeals to Secretary: transmittal of record.

(a) *Filing of appeal.* Any party who disagrees with a judge's decision or any part thereof, may appeal the decision to the Secretary by transmitting an appeal petition to the hearing clerk within 30 days after service of said decision upon said party. Each issue set forth in the appeal, and the arguments thereon, shall be separately numbered; shall be plainly and concisely stated; and shall contain detailed citations of the record, statutes, regulations and authorities being relied upon in support thereof. The appeal petition shall be served upon the other party to the proceeding by the hearing clerk.

(b) *Argument before Secretary*—(1) *Oral argument.* A party bringing an appeal may request within the prescribed time period for filing such appeal, an opportunity for oral argument before the Secretary. Failure to make such request in writing, within the prescribed time period, shall be deemed a waiver of oral argument. The Secretary, in his discretion, may grant, refuse or limit any request for oral argument on appeal.

(2) *Scope of argument.* Argument to be heard on appeal, whether oral or in a written brief, shall be limited to the issues raised by the appeal, except that if the Secretary determines that additional issues should be argued, the parties shall be given reasonable notice of such determination, so as to permit preparation of adequate arguments on all the issues to be argued.

(c) *Response.* Within 20 days after service of an appeal brought by a party to the proceeding, any other party may file a response in support of or in opposition to such appeal.

(d) *Transmittal of record.* Whenever an appeal is filed by a party to the proceeding, the hearing clerk shall transmit to the Secretary the record of the proceeding. Such record shall include: the pleadings; any motions and requests filed, and the rulings thereon; the transcript of the testimony taken at the hearing, as well as the exhibits filed in connection therewith; any statements filed under the shortened procedure; any documents or papers filed in connection with prehearing conferences; such proposed findings of fact, conclusions, and orders, and briefs in support thereof, as may have been filed in connection with the hearing; the judge's initial decision; and the appeal petition; briefs in support thereof, and responses thereto as may have been filed in the proceeding.

[38 FR 29799, Oct. 29, 1973]

§ 900.66 Consideration of appeal by the Secretary and issuance of final order.

(a) *Consideration of appeal.* As soon as practicable after the receipt of the record from the hearing clerk, or, in case oral argument was had, as soon as practicable thereafter, the Secretary, upon the basis of and after due consideration of the record, shall rule on the appeal. If the Secretary decides that no change or modification of the judge's decision is warranted, he may adopt the Judge's decision as the final order of the Secretary, preserving any right of the party bringing the appeal to seek judicial review of such decision in the proper forum. At no stage of the proceeding between its institution and the issuance of the order shall the Secretary discuss ex parte the merits of the proceeding with any person who is connected with the proceeding in an advocative or an investigative capacity, or with any representative of such person: *Provided, however,* That the Secretary may discuss the merits of the proceeding with such a person if all parties to the proceeding, or their representatives, have been given an opportunity to be present. If, notwithstanding the foregoing provisions of this section, a memorandum or other communication from any party, or from any person acting on behalf of any party, which relates to the merits of the proceeding, receives the personal attention of the Secretary (or, if an official other than the Secretary is to issue the order, then of such other official) during the pendency of the proceeding, such memorandum or communication shall be regarded as argument made in the proceeding and shall be filed with the hearing clerk, who shall serve a copy thereof upon the opposite party to file a reply thereto.

(b) *Issuance of final order.* A final order issued by the Secretary shall be filed with the hearing clerk, who shall serve it upon the parties: *Provided,* That, if the terms of the order differ substantially from those proposed in the decision of the judge, the Secretary shall, if he deems it advisable to do so, direct that a copy of the order be served upon the parties as a tentative order; and, in such event, opportunity shall be given the parties to file exceptions thereto and written arguments or briefs in support of such exceptions. In such case, if exceptions are filed within a period of time (to be fixed by the Secretary but not to exceed 20 days) following the service of the tentative order, the Secretary shall give consideration, to and shall make such changes in the tentative order as he deems to be appropriate; otherwise, the tentative order shall become final, as of the day following the date of expiration of the period fixed for the filing of exceptions.

[38 FR 29799, Oct. 29, 1973]

§ 900.67 [Reserved]

§ 900.68 Applications for reopening hearings; for rehearings or rearguments of proceedings; or for reconsideration of orders.

(a) *Petition requisite*—(1) *Filing; service.* An application for reopening the hearing to take further evidence, or for rehearing or reargument of the proceeding, or for reconsideration of the order shall be made by petition addressed to the Secretary and filed with the hearing clerk, who immediately shall notify and serve a copy thereof upon the other party to the proceeding. Every such petition shall state specifically the grounds relied upon.

(2) *Petitions to reopen hearings.* A petition to reopen the hearing for the purpose of taking additional evidence may be filed at any time prior to the issuance of the final order. Every such petition shall state briefly the nature and purpose of the evidence to be adduced, shall show that such evidence is not merely cumulative, and shall set forth a good reason why such evidence was not adduced at the hearing.

(3) *Petitions to rehear or reargue proceedings, or to reconsider orders.* A petition to rehear or reargue the proceeding or to reconsider the final order shall be filed within 15 days after the date of the service of such order. Every such petition shall state specifically the matters claimed to have been erroneously decided, and alleged errors must be briefly stated.

(b) *Procedure for disposition of petitions.* Within 10 days following the service of any petition provided for in this section, the other party to the proceeding shall file with the hearing clerk an answer thereto. As soon as practicable thereafter, the Secretary shall announce the decision granting or denying the petition. Unless the Secretary shall determine otherwise, the issuance or operation of the order shall not be stayed pending the decision of the Secretary upon the petition. In the event that any such petition is granted by the Secretary, the applicable rules of practice, as set out elsewhere in this subpart, shall be followed.

§ 900.69 Filing; service; extensions of time; effective date of filing; and computation of time.

(a) *Filing; number of copies.* Except as provided otherwise herein, all documents or papers required or authorized in this subpart to be filed with the hearing clerk shall be filed in quadruplicate: *Provided,* That, if there are more than two parties to the proceeding, a sufficient number of additional copies shall be filed so as to provide for service upon all the parties to the proceeding. Any document or paper, required or authorized in this subpart to be filed with the hearing clerk, shall, during the course of an oral hearing, be filed with the judge.

(b) *Service; proof of service.* Copies of all such papers shall be served upon the parties by the hearing clerk, by the judge, or by some other employee of the Department or by a United States Marshal or his deputy. Service shall be made either (1) by delivering a copy of the document or paper to the individual to be served or to a member of the partnership to be served or to the president, secretary, or other executive officer or any director of the corporation, organization, or association to be served, or to the attorney or agent of record of such individual, partnership, corporation, organization, or association; or (2) by leaving a copy of the document or paper at the principal office or place of business of such individual, partnership, corporation, organization, or association, or of his or its attorney or agent of record; or (3) by registering and mailing a copy of the document or paper, addressed to such individual, partnership, corporation, organization, or association, or to his or its attorney or agent of record, at his or its last known principal office, place of business, or residence. Proof of service hereunder shall be made by the affidavit of the person who actually made the service. The affidavit contemplated herein shall be filed with the hearing clerk, and the fact of filing thereof shall be noted on the docket of the proceeding.

(c) *Extensions of time.* The time for the filing of any documents or papers required or authorized in this subpart to be filed may be extended upon (1) a written stipulation between the parties, or (2) upon the request of a party, by the judge before the transmittal of the record to the Secretary, or by the Secretary at any other time if, in the judgment of the Secretary or the judge, as the case may be, there is good reason for the extension.

(d) *Effective date of filing.* Any document or paper, except a petition filed pursuant to § 900.52, required or authorized under these rules to be filed shall be deemed to have been filed when it is postmarked, or when it is received by the hearing clerk. Any petition filed under § 900.52 shall be deemed to be filed when it is received by the hearing clerk.

(e) *Computation of time.* Sundays and Federal holidays shall be included in computing the time allowed for the filing of any document or paper: *Provided,* That, when such time expires on a Sunday or legal holiday, such time shall be extended to include the next following business day.

§ 900.70 Applications for interim relief.

(a) *Filing the application.* A person who has filed a petition pursuant to § 900.52 may by separate application filed with the hearing clerk apply to the Secretary for an order postponing the effective date of, or suspending the application of, the marketing order or any provision thereof, or any obligation imposed in connection therewith, pending final determination of the proceeding.

(b) *Contents of the application.* The application shall contain a statement of the facts upon which the relief is requested, including any facts showing irreparable injury. The application must be signed and sworn to by the petitioner and any facts alleged therein which are not within his personal knowledge shall be supported by affidavits of a person or persons having personal knowledge of such facts or by proper documentary evidence thereof.

(c) *Answer to application.* Immediately upon receipt of the application, the hearing clerk shall transmit a copy thereof, together with all supporting papers, to the Administrator, who shall, within 20 days, or such other time fixed by the Secretary, after the filing of the application file an answer thereto with the hearing clerk.

(d) *Contents of answer.* The answer shall contain a statement of the objections, if any, of the Administrator to the application for interim relief, and may be supported by affidavits and documentary evidence.

(e) *Transmittal to Secretary.* Upon receiving the answer of the Administrator or upon the expiration of the time for filing the answer, the hearing clerk shall transmit to the Secretary for his decision all papers filed in connection with the application.

(f) *Hearing and oral argument.* The Secretary may, in his discretion, permit oral argument or the taking of testimony in connection with such application. However, unless written request therefor is filed with the hearing clerk prior to the transmittal of the papers to the Secretary, the parties shall be deemed to have waived oral argument and the taking of testimony.

(g) *Decision by Secretary.* The Secretary may grant or deny the application. Any action taken by the Secretary shall be in the form of an order filed with the hearing clerk and shall contain a brief statement of the reasons for the action taken. The hearing clerk shall cause copies of the order to be served upon the parties.

§ 900.71 Hearing before Secretary.

The Secretary may act in the place and stead of a judge in any proceeding hereunder. When he so acts the hearing clerk shall transmit the record to the Secretary at the expiration of the period provided for the filing of proposed findings of fact, conclusions and orders, and the Secretary shall thereupon, after due consideration of the record, issue his final order in the proceeding: *Provided,* That he may issue a tentative order in which event the parties shall be afforded an opportunity to file appeals before the issuance of the final order.

Subpart—Procedure Governing Meetings To Arbitrate and Mediate Disputes Relating to Sales of Milk or Its Products

AUTHORITY: Sec. 3, 50 Stat. 248; 7 U.S.C. 671.

§ 900.100 Words in the singular form.

Words in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 900.101 Definitions.

As used in this subpart, the terms as defined in the Act shall apply with equal force and effect. In addition, unless the context otherwise requires:

(a) The term "Act" means section 3 of the Agricultural Marketing Agreement Act of 1937, as amended (50 Stat. 248, as amended; 7 U.S.C. 671);

(b) The term "Department" means the United States Department of Agriculture;

(c) The term "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead;

(d) The term "General Counsel" means the General Counsel of the Department;

(e) The term "Administrator" means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in his stead.

(f) The term "Service" means the Agricultural Marketing Service.

(g) The term "Division" means the Dairy Division of the Service.

(h) The term "cooperative" means any association, incorporated or otherwise, which is in good faith owned or controlled by producers, or organizations thereof, of milk or its products, and which is bona fide engaged in the collective processing or preparing for market or handling or marketing, in the current of interstate or foreign commerce, of milk or its products;

(i) The term "arbitrator" means any officer or employee of the Service designated by the Administrator, pursuant to the Act, to arbitrate a bona fide dispute with reference to the terms and conditions of the sale of milk or its products between a producer cooperative and purchasers, handlers, processors, or distributors of milk or its products;

(j) The term "mediator" means any officer or employee of the Service designated by the Administrator, pursuant to the act, to mediate a bona fide dispute with reference to terms and conditions of the sale of milk or its products between a producer cooperative and purchasers, handlers, processors, or distributors of milk or its products;

(k) The term "hearing clerk" means the hearing clerk, United States Department of Agriculture, Washington, D.C.

[25 FR 5907, June 28, 1960, as amended at 26 FR 7797, Aug. 22, 1961, 28 FR 579, Jan. 23, 1963; 37 FR 8059, Apr. 25, 1972]

§ 900.102 Filing of applications for mediation or arbitration.

All applications for mediation or arbitration, all submissions, and all correspondence regarding mediation or arbitration shall be addressed to the Secretary, attention of the Division.

§ 900.103 Application for mediation.

An application for mediation by cooperative shall be in writing and shall include the following information:

(a) Names in full of the parties to the dispute and their addresses;

(b) Description of the cooperative organization and business, including copies of the articles of incorporation or association, bylaws, and membership contract; information regarding the number of shares of outstanding stock and the approximate portion owned by active producers; a statement of the function performed in connection with the collective processing, preparing, handling, or marketing of milk or its products; and data relative to the distribution of membership by States, the distribution by States of plant facilities for collecting, processing, or disposing of milk or its products, and the business operations for the year last past, including the total quantity of milk and its products handled by the applicant and the proportion of that quantity that was sold in States other than the States of production;

(c) Suggested time and place for meeting between parties and mediator.

§ 900.104 Inquiry by the Administrator.

Upon receipt of an application for mediation, the Administrator, through such officers or employees of the Service as he may designate, may make any inquiry which is deemed to be necessary or proper in order to determine whether a bona fide dispute exists.

§ 900.105 Notification.

The Administrator, acting on behalf of the Secretary will notify the applicant as to whether he considers that mediation will effectuate the purpose of the act and as to whether he will mediate.

§ 900.106 Assignment of mediator.

The Director of the Division shall assign a mediator, from the group designated by the Administrator, to act in such capacity.

§ 900.107 Meetings.

All meetings held pursuant to §§ 900.103 to 900.109 shall be held with and under the direction of the mediator.

§ 900.108 Mediator's report.

The mediator, upon the completion of mediation proceedings, shall submit to the Administrator a complete report on such proceedings.

§ 900.109 Mediation agreement.

An agreement arrived at by mediation shall not become effective until approved by the Secretary, and the Secretary will not approve an agreement if there is evidence of fraud, if there is a lack of evidence to support the agreement, or if the agreement provides for any unfair trade practice.

§ 900.110 Application for arbitration.

An application for arbitration by a cooperative shall be in writing and shall contain the following information:

(a) Names in full of the parties to the dispute and their addresses;

(b) The same information required under § 900.103(b);

(c) Concise statement of dispute to be submitted;

(d) Originals or certified copies of all contracts, if any, involved in the dispute, and of correspondence which has passed between the parties and of any other documents or information relied upon;

(e) Dates before which it is desired that the hearing shall be had and the award shall become effective;

(f) Suggested time and place for arbitration hearing.

The applicant shall send a copy of the application to each other party to the dispute.

§ 900.111 Inquiry by the Administrator.

Upon receipt of an application for arbitration, the Administrator, through such officers or employees of the Service as he may designate, may make any inquiry deemed to be necessary or proper in order to determine whether a bona fide dispute exists, to assist the parties in reducing the dispute to well-defined issues, and to select an arbitrator who would be satisfactory to all parties.

§ 900.112 Notification.

The Administrator, acting on behalf of the Secretary, within a reasonable time after the receipt of an application, will notify the applicant as to whether he will grant the application.

§ 900.113 Submission.

Within a reasonable time after the receipt of the Administrator's consent to arbitrate, the parties to the dispute shall file with the Administrator a formal submission, which shall contain the following information:

(a) Names in full of the parties;

(b) Addresses of the parties to whom all notifications and communications concerning the arbitration shall be sent;

(c) Description of the organization and businesses of all parties to the dispute, including sufficient information to show that the cooperative is a bona fide one, and that the parties are engaged in activities in the current of interstate or foreign commerce;

(d) Concise statement of the specific questions submitted and a brief outline of the contentions of each party to the dispute, and a statement as to the period of time during which the award shall be in effect, said period to be not less than thirty days from the effective date of the award;

(e) Name of arbitrator;

(f) Time and place of arbitration, including street address;

(g) Stipulation by the parties that they will produce any books, records, and correspondence required by the arbitrator as being necessary to a fair determination of the dispute;

(h) Agreement by the parties that they will consider the award as final and will comply therewith;

(i) Stipulation by the parties that arbitration is to take place under rules and regulations issued by the Secretary, and that any such rules and regulations pertaining to mediation and arbitration shall be considered a part of the submission;

(j) Stipulation that a stenographic report of the proceedings must be made.

The submission shall be signed by each party before a notary public, and when the signature is that of an agent of a corporation or cooperative association, the same shall be accompanied by evidence of the authority to sign.

A submission may be withdrawn at any time before the award, and any question held by the arbitrator to be a separable question may be withdrawn before award by agreement of all parties. When any question is so withdrawn, the parties shall file with the arbitrator the agreement on that question reached by the parties, showing all the details thereof, and the arbitrator shall include it in the record of the arbitration.

§ 900.114 Designation of arbitrator.

The Administrator, after receiving the submission, will designate one or more persons to act as arbitrator.

§ 900.115 Hearing.

The arbitrator shall have full discretion to conduct the hearing in such manner as will, in his opinion, enable him to ascertain all the facts in the case.

Parties to the dispute may appear in person or by duly accredited agents and may be represented by counsel.

All relevant and material evidence may be presented. The arbitrator shall not be bound by the legal rules of evidence.

The arbitrator, in the presence of the parties, may require the production of books and records for examination by himself, but not for examination of confidential information by other parties to the dispute unless the party producing the same consents to its examination by the other parties to the dispute.

No evidence offered by one party shall be received except in the presence of all parties unless the parties so agree in a submission

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specifying the nature of the evidence to be received.

Final determination as to what will be considered confidential information shall be made by the arbitrator.

The arbitrator may request the opinions of economists, marketing specialists, statisticians, lawyers, accountants, and other experts.

When more than two arbitrators are designated to hear a dispute, and they disagree, the award of the majority shall be the final award. If the arbitrators are evenly divided, there shall be no award.

A stenographic record of all the proceedings during an arbitration must be made.

§ 900.116 Award.

An award shall be made within ten days after the close of the hearing.

The award shall be in writing and shall cover only points of dispute raised in the submission.

The arbitrator, in making the award, may use his own technical knowledge in addition to the evidence submitted by the parties.

The award shall state the period during which it shall be in effect, said period to be not less than thirty days from the effective date thereof; and said period may be extended by agreement among the parties upon notification thereof to the Administrator, unless or until the Administrator withdraws his approval.

The arbitrator shall sign the award in the presence of a notary public, or, when more than one arbitrator is designated the arbitrator shall sign in the presence of each other.

Copies of the award shall be delivered to the parties by the Division.

§ 900.117 Approval of award.

The award shall not become effective until approved by the Secretary, and the Secretary will not approve an award if there is evidence of fraud, or evidence of misconduct upon the part of the arbitrator, or lack of evidence to support the award, or if the award provides for any unfair trade practice.

§ 900.118 Costs.

The parties jointly shall pay for the stenographic record. A copy of the record shall be furnished by the parties to the arbitrator and shall be forwarded by him to the Administrator, ultimately to be filed in the office of the hearing clerk.

The arbitrator shall not receive compensation for parties to the dispute.

Subpart—Miscellaneous Regulations

AUTHORITY: Sec. 10, 48 Stat. 37, as amended; 7 U.S.C. 610.

§ 900.200 Definitions.

As used in this subpart, the terms as defined in the Act shall apply with equal force and effect. In addition, unless the context otherwise requires:

(a) The term "Act" means Public Act No. 10, 73d Congress (48 Stat. 31), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937 (50 Stat. 246, 7 U.S.C. 601), as amended;

(b) The term "Department" means the United States Department of Agriculture;

(c) The term "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead;

(d) The term "General Counsel" means the General Counsel of the Department;

(e) The term "Administrator" means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in his stead.

(f) [Reserved]

(g) The term "FEDERAL REGISTER" means the publication provided for by the Act of July 26, 1935 (49 Stat. 500), and acts supplementary thereto and amendatory thereof;

(h) The term "marketing agreement" means any marketing agreement or any amendment thereto which may be entered into pursuant to section 8b of the Act;

(i) The term "marketing order" means any order or any amendment thereto which may be issued pursuant to section 8c of the Act;

(j) The term "person" means any individual, corporation, partnership, association, or any other business unit;

(k) The term "official" means the Secretary, any officer, employee, or other person employed or appointed by the Department, and any agency or agent appointed by the Secretary to administer a marketing agreement or a marketing order, and any agent or employee of any such agency or agent;

(l) The term "information" means and includes reports, books, accounts, records, and the facts and information contained therein and required to be furnished to or acquired by any official pursuant to the provisions of any marketing agreement or marketing order.

[25 FR 5907, June 28, 1960, as amended at 26 FR 7796, Aug. 22, 1961; 28 FR 579, Jan. 23, 1963]

§ 900.201 Investigation and disposition of alleged violations.

Whenever the Administrator has reason to believe that any handler has violated, or is violating, the provisions of any marketing order, he may institute such investigation and, after due notice to such handler, conduct such hearing in order to determine the facts as, in his opinion, are warranted. If, in the opinion of the Administrator and the General Counsel, the facts developed as a result of such investigation or hearing warrant such action, the General Counsel shall refer the matter to the Attorney General for appropriate action.

§ 900.210 Disclosures of information.

All information in the possession of any official which relates to the business or property of any person, and which was furnished by, or obtained from, such person pursuant to the provisions of any marketing agreement or marketing order, shall be kept confidential and shall not be disclosed, divulged, or made public, unless otherwise expressly provided in said marketing agreement or marketing order, or unless said person authorizes said official, in writing, to disclose such information, except that:

(a) Such information may be disclosed, divulged, or made public if it has been obtained from or furnished by a person who is not the person to whose business or property such information relates or an employee of such latter person, or if such information is otherwise required by law to be furnished to an official;

(b) Such information may be furnished to other officials for use in the regular course of their official duties;

(c) Such information may be combined and published in the form of general statistical studies or data in which the identity of the person furnishing such information or from whom it was obtained shall not be disclosed;

(d) Such information may be disclosed upon lawful demand made by the President or by either House of Congress or any committee thereof, or, if the Secretary determines that such disclosure is not contrary to the public interest, such information may be disclosed in response to a subpena by any court of competent jurisdiction.

(e) Such information may be offered in evidence (whether or not it has been obtained from or furnished by the person against whom it is offered) by or on behalf of the Secretary, the United States, or the official who obtained it or to whom it was furnished, in any administrative hearing held pursuant to section 8c (15)(A) of the Act or in any action, suit, or proceeding, civil or criminal, in which the Secretary or the United States or any such official is a party, and (1) which is instituted (i) for the purpose of enforcing or restraining the violation of any marketing agreement or marketing order, or (ii) for the purpose of collecting any penalty or forfeiture provided for in the act, or (iii) for the purpose of collecting any monies due under a marketing agreement or marketing order, or (2) in which the validity of any marketing agreement or marketing order, or any provision of either, is challenged or involved.

(f) Such information may be furnished to the duly constituted authorities of any State, pursuant to a written agreement made under authority of section 10(i) of the Act, to the extent that such information is relevant to transactions within the regulatory jurisdiction of such authorities.

§ 900.211 Penalties.

Any official who shall have violated the provisions of § 900.210 by wilfully divulging, disclosing, or making public any information acquired by or furnished to or in the possession or custody of such official pursuant to the provisions of a marketing agreement or marketing order shall be subject to a penalty of $100 for each offense. (The civil penalty provided in this section is prescribed under the authority contained in sec. 10(c) of the Act (7 U.S.C. 610(c)); this provision is not intended to supersede the provision in sec. 8d(2) of the Act (7 U.S.C. 608d(2)) for criminal liability and removal from office.

Subpart—Procedure for Conduct of Referenda To Determine Producer Approval of Milk Marketing Orders To Be Made Effective Pursuant to Agricultural Marketing Agreement Act of 1937, as Amended

AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

SOURCE: 30 FR 15412, Dec. 15, 1965, unless otherwise noted.

§ 900.300 General.

Unless otherwise prescribed, the procedure contained in this subpart shall be applicable to each producer referendum conducted for the purpose of ascertaining whether the issuance by the Secretary of a milk marketing order is approved or favored, as required under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended, 7 U.S.C. 601-674). The procedure in this subpart replaces the procedure for conducting similar referenda (15 FR 5177) issued August 7, 1950.

§ 900.301 Definitions.

As used in this subpart and in all supplementary instructions, forms, and documents, unless the context or subject matter otherwise requires, the following terms shall have the following meanings:

(a) *Act.* "Act" means Public Act No. 10, 73d Congress (48 Stat. 31), as amended and as re-enacted and amended by the Agricultural Marketing Agreement Act of 1937 (50 Stat. 246), as amended.

(b) *Department.* "Department" means the United States Department of Agriculture.

(c) *Secretary.* "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

(d) *Administrator.* "Administrator" means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in his stead.

(e) *Person.* "Person" includes any individual, partnership, corporation, association, and any other business unit.

(f) *Order.* "Order" means the marketing order (including an amendatory order) with respect to which the Secretary has directed that a referendum be conducted.

(g) *Producer.* "Producer" means any person who is a dairy farmer and who, during the representative period, met the requirements of the term "producer" as defined in the order had such order been in effect during the representative period.

(h) *Handler.* "Handler" means any person who, during the representative period, met the requirements of the term "handler" as defined in the order had such order been in effect during the representative period.

(i) *Referendum agent.* "Referendum agent" means the person designated by the Secretary to conduct the referendum.

(j) *Representative period.* "Representative period" means the period designated by the Secretary pursuant to section 8c of the act (7 U.S.C. 608c).

(k) *Cooperative association.* "Cooperative association" means any association of producers that the administrator has found to be qualified pursuant to section 608c(12) of the Act.

[30 FR 15412, Dec. 5, 1965, as amended at 37 FR 8059, Apr. 25, 1972]

§ 900.302 Associations eligible to vote.

(a) Any association of producers, not previously determined to be a cooperative association may file an application for a determination as to whether it is a cooperative association and thus eligible to vote in a referendum. Such application shall be filed with the Administrator at least 60 days prior to the holding of the referendum: *Provided, however,* That the Administrator may permit the filing of an application in less than 60 days when, in the opinion of the Administrator, such filing would not delay the conduct of the referendum.

(b) Within a time fixed by the referendum agent, but not later than 5 days prior to the final date for balloting, each cooperative association electing to vote shall, upon the request of the referendum agent, furnish to him a certified list showing the name and address of each producer for whom it claims the right to vote and the plant at which such person's milk was received during the representative period.

§ 900.303 Conduct of referendum.

The referendum shall be conducted by mail in the manner prescribed in this subpart. The referendum agent may utilize such personnel or agencies of the Department as are deemed necessary by the Administrator.

§ 900.304 Who may vote.

(a) Each producer shall be entitled to only one vote and to cast one ballot in each referendum; and no person who may claim to be a producer shall be refused a ballot. Each producer casting more than one ballot with conflicting votes shall thereby invalidate all ballots cast by such producer in such referendum. Each ballot cast shall contain a certification by the person casting the ballot that he is a producer.

(b) Except as provided in section 8c(5)(B) of the Act, as amended, any cooperative association eligible under § 900.302 may, if it elects to do so, vote and cast one ballot for producers who are members of, stockholders in, or under contract with, such cooperative association. A cooperative association shall submit with its ballot, a certified copy of the resolution authorizing the casting of the ballot. Each such cooperative association entitled to vote in a referendum casting more than one ballot with conflicting votes shall thereby invalidate all ballots cast by such voter in such referendum.

(c) Voting by proxy or agent, or in any manner, except by the producer or cooperative association will not be permitted; however, a producer which is other than an individual may cast its ballot by a person who is duly authorized and such ballot shall contain a certification by such person that the person on whose behalf the ballot is cast is a producer.

§ 900.305 Duties of referendum agent.

The referendum agent shall also:

(a) For purposes of mailing, prepare a record of producers which will disclose the name of each such person, his address, the name of the handler who received the producer's milk during the representative period, and the name of the cooperative association, if any, which claims the right to vote for the producer. Such record may be compiled from readily available sources, including the following:

(1) Records of the Department;

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(2) Producer records supplied by handlers;

(3) Health authority records;

(4) Certifications signed by dairy farmers who claim to be producers;

(5) Any other reliable sources of information which may be available to the referendum agent.

(b) Apply, as a guide, the following criteria in preparing a record of producers:

(1) When the order requires approval by an appropriate health authority before a person meets the definition of producer, only those persons having such approval and who otherwise meet the definition may be regarded as producers. When the definition of producer requires the shipment of milk to a handler or a plant as well as health authority approval, only those persons having such approval and whose milk was received by a handler or at a plant may be regarded as producers.

(2) When the order requires shipment to a handler or to a plant, without regard to health authority approval, a person may not be regarded as a producer, except as provided in paragraph (b)(6) of this section, unless his name appears on the handler's producer records.

(3) In the case of a producer that is other than an individual, the business unit shall be regarded as the producer.

(4) No person may be included in the record more than once although he may operate more than one farm, hold more than one health authority approval, or appear on more than one handler's producer records.

(5) In the event the health authority records are not available, are inaccurate, or are incomplete, the appearance of the producer's name on a handler's records as an approved producer shall be prima facie evidence of health authority approval.

(6) In the event any handler refuses or fails to make his records available to the referendum agent, a certification signed by the producer shall be regarded by the referendum agent as prima facie evidence that such person is eligible to vote.

(c) Verify the information supplied by each cooperative association which wishes to vote on behalf of producers, as follows:

(1) Examine the records of the cooperative association for the prupose of ascertaining whether each producer claimed by the cooperative association is a member of, stockholder in, or under contract with the cooperative association.

(2) Identify the persons ascertained to be members of, stockholders in, or under contract with a cooperative association which wishes to vote on behalf of its producers with the names of producers which appear on the record compiled pursuant to paragraph (a) of this section.

(3) In determining whether a cooperative association may vote on behalf of a producer the following criteria shall be used:

(i) The cooperative association may vote for each producer who is a member of, stockholder in, or under contract with such cooperative association on the date of the order directing that the referendum be conducted.

(ii) The cooperative association may cast only one ballot for all such producers.

(iii) Whenever more than one cooperative association claims the right to vote for a producer only the cooperative association which furnished evidence satisfactory to the referendum agent that such association was in fact marketing the milk of the producer on the date of the referendum order may vote for such producer.

§ 900.306 Notice of the referendum.

(a) The referendum agent shall at least 5 days prior to the final date for balloting:

(1) Mail to each cooperative association which has elected to cast a ballot on behalf of its producers and to each of all other known producers, a notice of the referendum which will include instructions for completing the ballot, a statement as to the time within which the ballot must be mailed to, and received by, the referendum agent, a copy of the final decision, and a ballot containing a description of the terms and conditions of the order.

(2) Give public notice of the referendum:

(i) By furnishing press releases and other information to available media of public information (including but not limited to press, radio, and television facilities) serving the area, announcing the time within which ballots must be completed and mailed to and received by the referendum agent, eligibility requirements, where additional information may be procured, and other pertinent information; and

(ii) By such other means as said agent may deem advisable.

§ 900.307 Time for voting.

There shall be no voting except within the time specified by the referendum agent as stated in the notice of the referendum.

§ 900.308 Tabulation of ballots.

(a) *General.* The referendum agent shall verify the information supplied with each ballot. If he ascertains that the person who cast the ballot was eligible to do so, that the ballot is complete and was mailed and received within the prescribed time, the ballot shall be eligible to be counted. If the referendum agent ascertains that the person who cast the ballot was not eligible to do so, or if the producer who cast the ballot was a member of, stockholder in, or under contract with a cooperative association which cast a valid ballot, or if the ballot is not completed or cast in accordance with instructions, or if the ballot was not mailed to or received by the referendum agent within the prescribed time, the ballot shall be marked "disqualified" with a notation on the ballot as to the reason for the disqualification. The total number of ballots cast, including the disqualified ballots, shall be ascertained. The number of eligible ballots cast approving and the number of eligible ballots cast disapproving the issuance of the order shall also be ascertained. The ballots marked "disqualified" shall not be considered as approving or disapproving the issuance of the order, and the persons who cast such ballots shall not be regarded as participating in the referendum.

(b) *Individual-handler pool provisions.* Whenever separate approval of the pooling provisions of the order is required by section 608c(5)(B)(i) of the Act, any ballot which approves the issuance of the order and disapproves the pooling provisions, or approves the pooling provisions and disapproves the issuance of the order, shall be disqualified; and the referendum agent shall mark the ballot accordingly.

(c) *Record of results of the referendum.* The referendum agent shall notify the Administrator of the number of eligible ballots cast, the count of the votes, the number of disqualified ballots and the number of producers who were eligible to cast ballots. The referendum agent shall seal the ballots, including those marked "disqualified", the list of eligible voters and tabulation of ballots, and shall transmit to the Administrator a complete detailed report of all action taken in connection with the referendum together with all the ballots cast and all other information furnished to or compiled by the referendum agent.

(d) *Announcement of the results of the referendum.* Announcement of the results of the referendum will be made only at the direction of the Secretary. The referendum agent, or others who assist in the referendum, shall not disclose the results of the referendum or the total number of ballots cast.

§ 900.309 Confidential information.

The ballots cast, the identity of any person who voted, or the manner in which any person voted and all information furnished to, compiled by, or in the possession of the referendum agent, shall be regarded as confidential.

§ 900.310 Supplementary instructions.

The Administrator is authorized to issue instructions and to prescribe forms and ballots, not inconsistent with the provisions of this subpart, to govern the conduct of referenda by referendum agents.

§ 900.311 Submittals or requests.

Interested persons may secure information or make submittals or requests to the Administrator with respect to the provisions contained in this subpart.

Subpart—Procedure for Determining the Qualification of Cooperative Milk Marketing Associations

AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

SOURCE: 32 FR 9821, July 6, 1967, unless otherwise noted.

NOMENCLATURE CHANGES: 37 FR 8059, Apr. 25, 1972.

§ 900.350 General statement.

Cooperative marketing associations apply for qualification by the Secretary under the Federal milk order program for certain privileges and exemptions. These privileges and exemptions are expressed in the Agricultural Marketing Agreement Act of 1937 (50 Stat. 246) as amended, and the milk marketing orders issued pursuant to its provisions.

§ 900.351 Applications for qualification.

Any association of producers may apply for determinations as to whether it is a qualified cooperative association with authority to represent producers in order referendums; has authorization to collect payment from handlers for members' milk; and is rendering specified marketing services to producers. Applicant associations should supply information for these determinations, using as a guide Application Form DA-25. The application form may be obtained from the Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250. Determinations required of the Secretary of Agriculture, or the Administrator of the Agricultural Marketing Service, by delegation are made by the Director of the Dairy Division. Once issued they are valid until amended, suspended or terminated.

§ 900.352 Confidential information.

The documents and other information submitted by an applicant association and otherwise obtained by investigation, examination of books, documents, papers, records, files and facilities, and in reports filed subsequent to initial determinations of qualification, shall be regarded as confidential and shall be governed by § 900.210.

§ 900.353 Qualification standards.

Statutory requirements for qualification of cooperative associations are provided in subsections (5) and (12) of section 608c of the Agricultural Marketing Agreement Act

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of 1937, as amended (7 U.S.C. 601 et seq.). The association must: (a) Be a cooperative marketing association of producers, qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act," (7 U.S.C. 291, 292); (b) have its entire organization and all of its activities under the control of its members; (c) have full authority in the sale of its members' milk; and (d) be engaged in making collective sales or marketing of milk or milk products for the producers thereof. Qualification for exemption from deductions for marketing service payments under specific marketing orders and payment for milk of members under specific orders shall be determined in accordance with the terms of the respective marketing orders.

§ 900.354 Inspection and investigation.

The Secretary of Agriculture, or his duly authorized representative, shall have the right, at any time after an application is received, to examine all books, documents, papers, records, files and facilities of the association, to verify any of the information submitted and to procure such other information as may be required to determine whether the association is qualified in accordance with its application.

§ 900.355 Annual reporting.

Determinations of qualification for privileges and exemptions are subject to amendment, termination or suspension if the association does not currently meet the qualification standards. An association found to be qualified pursuant to the Act is required to file an annual report after its annual meeting has been held following the close of its fiscal year. Form DA-24 is used for this purpose. The report form is available at the Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250. The association is required to file a copy of its report with the Dairy Division at Washington and with the market administrator of each order under which it operates.

§ 900.356 Listing of qualified associations.

A copy of each determination of qualification is furnished to the respective association. Copies are also filed in the Dairy Division, Agricultural Marketing Service, and with the Hearing Clerk, Office of the Secretary, U.S. Department of Agriculture, Washington, D.C. 20250, where they are available for public inspection. A list of qualified associations engaged in marketing milk under a particular milk marketing order is maintained at the office of the market administrator of the order.

§ 900.357 Denial of application; suspension or revocation of determination of qualification.

Any cooperative association whose application has been wholly or partially denied, or whose determination of qualification has been wholly or partly revoked or suspended, may petition the Secretary for a review of such action. Such petition shall state facts relevant to the matter for which review is sought. After due notice to such cooperative association, the Director of the Dairy Division, or in his absence the Acting Director, shall hold, in the manner hereinafter specified, an informal hearing.

(a) *Notice.* Notice shall be given in writing and shall be mailed to the last known address of the association, or of an officer thereof, at least 3 days before the date set for a hearing. Such notice shall contain: A statement of the time and place of the hearing, said place to be as convenient to the association as can reasonably be arranged, and may contain a statement of the reason for calling the hearing and the nature of the questions upon which evidence is desired or upon which argument may be presented.

(b) *Parties.* Hearings are not to be public and are to be attended only by representatives of the association and of the Government, and such other persons as either the association or the Government desires to have appear for purposes of submitting information or as counsel.

(c) *Conduct of hearing.* The Director or Acting Director of the Dairy Division, or a person designated by him, shall preside at the hearing. The hearing shall be conducted in such manner as will be most conducive to the proper disposition of the matter. Written statements or briefs may be filed by the association within the time specified by the presiding officer.

(d) *Preliminary report.* The presiding officer shall prepare a preliminary report setting forth a recommendation as to what action shall be taken and the basis for such action. A copy of said report shall be served upon the association by mail or in person. The association may file exceptions to said report within 10 days after service thereof.

(e) *Final report.* After due consideration of all the facts and the exceptions, if any, the Director of the Dairy Division shall issue a final report setting forth the action to be taken and the basis for such action.

Subpart—Procedure for the Conduct of Referenda in Connection With Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended

AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

SOURCE: 30 FR 15414, Dec. 15, 1965, unless otherwise noted.

§ 900.100 General.

Referenda for the purpose of ascertaining whether the issuance by the Secretary of Agriculture of a marketing order to regulate the handling of any fruit, vegetable, or nut, or product thereof, or the continuance or termination of such an order, is approved or favored by producers or processors shall, unless supplemented or modified by the Secretary, be conducted in accordance with this subpart.

§ 900.101 Definitions.

(a) "Act" means Public Act No. 10, 73d Congress (48 Stat. 31), as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937 (50 Stat. 246), as amended (7 U.S.C. 601-674).

(b) "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead; and "Department" means the United States Department of Agriculture.

(c) "Administrator" means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in his stead.

(d) "Order" means the marketing order (including an amendatory order) with respect to which the Secretary has directed that a referendum be conducted.

(e) "Referendum agent" means the individual or individuals designated by the Secretary to conduct the referendum.

(f) "Representative period" means the period designated by the Secretary pursuant to section 8c of the Act (7 U.S.C. 608c).

(g) "Person" means any individual, partnership, corporation, association, or other business unit. For the purpose of this definition, the term "partnership" includes (1) a husband and wife who have title to, or leasehold interest in, land as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property, and (2) so-called "joint ventures," wherein one or more parties to the agreement, informal or otherwise, contributed capital and others contribute labor, management, equipment, or other services, or any variation of such contributions by two or more parties, so that it results in the growing of the commodity for market and the authority to transfer title to the commodity so produced.

(h) "Producer" means any person defined as a producer in the order who: (1) Owns and farms land, resulting in his ownership of the commodity produced thereon; (2) rents and farms land, resulting in his ownership of all or a portion of the commodity produced thereon; or (3) owns land which he does not farm and, as rental for such land, obtains the ownership of a portion of the commodity produced thereon. Ownership of, or leasehold interest in, land and the acquisition, in any manner other than as hereinbefore set forth, of legal title to the commodity grown thereon shall not be deemed to result in such owners or lessees becoming producers.

[30 FR 15414, Dec. 15, 1965, as amended at 37 FR 8059, Apr. 25, 1972]

§ 900.102 Voting.

(a) Each person who is a producer, as defined in this subpart, at the time of the referendum and who also was a producer during the representative period, shall be entitled to only one vote in the referendum, except that: (1) In a landlord-tenant relationship, wherein each of the parties is a producer, each such producer shall be entitled to one vote in the referendum; and (2) a cooperative association of producers, bona fide engaged in marketing the commodity or product thereof proposed to be regulated, or in rendering services for or advancing the interest of the producers of such commodity or product, may, if it elects to do so, vote, both by number and total volume, for the producers who are members of, stockholders in, or under contract with such association.

(b) Whenever, as required by the act, processors vote on the issuance of an order, each processor who is engaged in canning or freezing within the production area of the commodity covered by the order shall be entitled to vote in the referendum the quantity of such commodity canned or frozen within the production area for market by him during the representative period determined by the Secretary.

(c) Proxy voting is not authorized but an officer or employee of a corporate producer, processor or cooperative association, or an administrator, executor or trustee of a producing estate may cast a ballot on behalf of such producer, processor, estate, or cooperative association. Any individual so voting in a referendum shall certify that he is an officer or employee of the producer, processor, or cooperative association, or an administrator, executor, or trustee of a producing estate, and that he has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(d) Each producer, cooperative association of producers, and processor entitled to vote in a referendum shall be entitled to cast one ballot in the referendum. Each producer, cooperative association of producers, and processor casting more than one ballot with conflicting votes shall thereby invalidate all ballots cast by such producer, cooperative association of producers, or processor in such referendum.

§ 900.103 Instructions.

The referendum agent shall conduct the referendum, in the manner herein provided, under supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the time of commencement and termination of the period of the referendum, and the time prior to which all ballots must be cast.

(b) Determine whether ballots may be cast by mail, at polling places, at meetings of producers or processors, or by any combination of the foregoing.

(c) Provide ballots and related material to be used in the referendum. Ballot material shall provide for recording essential information for ascertaining (1) whether the person voting, or on whose behalf the vote is cast, is an eligible voter, and (2) the total volume (i) produced for market during the representative period, or (ii) canned or frozen for market during the representative period.

(d) Give reasonable advance notice of the referendum (1) by utilizing without advertising expense available media of public information (including, but not being limited to, press and radio facilities) serving the production area, announcing the dates, places, or methods of voting, eligibility requirements, and other pertinent information, and (2) by such other means as said agent may deem advisable.

(e) Make available to producers and the aforesaid cooperative associations which indicate to the agent their intentions to vote, and to processors when required, instructions on voting, appropriate ballot and certification forms, and, except in the case of a referendum on the termination or continuance of an order, the text of the proposed order and a summary of its terms and conditions: *Provided*, That no person who claims to be qualified to vote shall be refused a ballot.

(f) If ballots are to be cast by mail, cause all the material specified in paragraph (e) of this section to be mailed to each producer (and processor when required) whose name and address is known to the referendum agent.

(g) If ballots are to be cast at polling places or meetings, determine the necessary number of polling or meeting places, designate them, announce the time of each meeting or the hours during which each polling place will be open, provide the material specified in paragraph (e) of this section, and provide for appropriate custody of ballot forms and delivery to the referendum agent of ballots cast.

(h) At the conclusion of the referendum, canvass the ballots, tabulate the results, and, except as otherwise directed, report the outcome to the Administrator and promptly thereafter submit the following:

(1) All ballots received by the agent and appointees, together with a certificate to the effect that the ballots forwarded are all of the ballots cast and received by such persons during the referendum period;

(2) A list of all challenged ballots deemed to be invalid; and

(3) A tabulation of the results of the referendum and a report thereon, including a detailed statement explaining the method used in giving publicity to the referendum and showing other information pertinent to the manner in which the referendum was conducted.

§ 900.104 Subagents.

The referendum agent may appoint any person or persons deemed necessary or desirable to assist said agent in performing his functions hereunder. Each person so appointed may be authorized by said agent to perform, in accordance with the requirements herein set forth, any or all of the following functions (which, in the absence of such appointment, shall be performed by said agent):

(a) Give public notice of the referendum in the manner specified herein;

(b) Preside at a meeting where ballots are to be cast or as poll officer at a polling place;

(c) Distribute ballots and the aforesaid texts to producers (and to processors when required) and receive any ballots which are cast; and

(d) Record the name and address of each person receiving a ballot from, or casting a ballot with, said subagent and inquire into the eligibility of such person to vote in the referendum.

§ 900.105 Ballots.

The referendum agent and his appointees shall accept all ballots cast; but, should they, or any of them, deem that a ballot should be challenged for any reason, said agent or appointee shall endorse above his signature, on said ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefor, the results of any investigations made with respect thereto, and the disposition thereof. Invalid ballots shall not be counted.

§ 900.106 Referendum report.

Except as otherwise directed, the Administrator shall prepare and submit to the Secretary a report on results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to analysis of the referendum and its results.

§ 900.407 Confidential information.

All ballots cast and the contents thereof (whether or not relating to the identity of any person who voted or the manner in which any person voted) and all information furnished to, compiled by, or in possession of, the referendum agent shall be treated as confidential.

Subpart—Public Information

AUTHORITY: 5 U.S.C. 301, 552.

SOURCE: 40 FR 20267, May 9, 1975, unless otherwise noted.

AVAILABILITY OF PROGRAM INFORMATION, STAFF MANUALS AND INSTRUCTIONS, AND RELATED MATERIAL

§ 900.500 General.

This subpart is issued in accordance with the regulations of the Secretary of Agriculture in Part 1, Subpart A, of Subtitle A of this Title (7 CFR 1.1-1.16), and Appendix A thereto, implementing the Freedom of Information Act (5 U.S.C. 552). The Secretary's regulations, as implemented by the regulations of this subpart, govern the availability of records of AMS to the public.

§ 900.501 Public inspection and copying.

(a) Facilities for public inspection and copying of the indexes and materials required to be made available under § 1.2(a) of this Title will be provided by AMS during normal hours of operation. Request for this information should be made to the Freedom of Information Act Officer at the following address:

Freedom of Information Act Officer, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250.

(b) Copies of such material may be obtained in person or by mail. Applicable fees for copies will be charged in accordance with the regulations prescribed by the Director, Office of Operations and Finance, USDA.

[44 FR 39151, July 5, 1979]

§ 900.502 Indexes.

Pursuant to the regulations in § 1.4(b) of this title, AMS will maintain and make available for public inspection and copying current indexes of all material required to be made available in § 1.2(a) of this title. Notice is hereby given that publication of these indexes is unnecessary and impractical, since the material is voluminous and does not change often enough to justify the expense of publication.

[44 FR 39151, July 5, 1979]

§ 900.503 Request for records.

(a) Requests for records under 5 U.S.C. 552(a)(3) shall be made in accordance with § 1.3(a) of this title. Authority to make determinations regarding initial requests in accordance with § 1.4(c) of this title is delegated to the Freedom of Information Act Officer of AMS. Requests should be submitted to the FOIA Officer at the following address:

Freedom of Information Act Officer (FOIA Request), Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250.

(b) The request shall identify each record with reasonable specificity as prescribed in § 1.3 of this title.

(c) The FOIA Officer is authorized to receive requests and to exercise the authority to (1) make determinations to grant requests or deny initial requests, (2) extend the administrative deadline, (3) make discretionary release of exempt records, and (4) make determinations regarding charges pursuant to the fee schedule.

[44 FR 39151, July 5, 1979]

§ 900.504 Appeals.

Any person whose request under § 900.503 above is denied shall have the right to appeal such denial in accordance with § 1.3(e) of this title. Appeals shall be addressed to the Administrator, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250.

Subpart—Information Collection

AUTHORITY: 44 U.S.C. Ch. 35.

§ 900.600 General.

This subpart shall contain such requiremelts as pertain to the information collection provisions under the Paperwork Reduction Act of 1980.

[49 FR 23825, June 8, 1984]

§ 900.601 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This section collects and displays the control numbers assigned to information collection requirements by the Office of Management and Budget contained in 7 CFR Parts 904 through 993 under the Paperwork Reduction Act of 1980.

(b) *Display.*

7 CFR part where identified and described	Current OMB control No
904. California Desert Grapefruit	0581-0101
905. Florida Oranges, Grapefruit, Tangerines, Tangelos	0581-0094
906. Texas Oranges & Grapefruit	0581-0068
907. California-Arizona Navel Oranges	0581-0116
908. California-Arizona Valencia Oranges	0581-0121
910. California-Arizona Lemons	0581-0120
911. Florida Limes	0581-0091
912. Florida Indian River Grapefruit	0581-0088
913. Florida Interior District Grapefruit	0581-0081
915. Florida Avocados	0581-0078
916. California Nectarines	0581-0072
917. California Pears, Plums & Peaches	0581-0080
918. Georgia Fresh Peaches	0581-0135
919. Mesa County, Colorado, Peaches	0581-0139
921. Washington Peaches	0581-0097
922. Washington Apricots	0581-0095
923. Washington Sweet Cherries	0581-0133
924. Washington-Oregon Fresh Prunes	0581-0134
925. S. E. California Desert Grapes	0581-0109
926. California Tokay Grapes	0581-0075
927. Oregon-Washington-California Winter Pears	0581-0089
928. Hawaiian Papayas	0581-0102
929. Cranberries Grown in Designated States	0581-0103
930. Red Tart Cherries	0581-0104
931. Oregon-Washington Bartlett Pears	0581-0092
932. California Olives	0581-0142
945. Idaho-Eastern Oregon Potatoes	0581-0069
946. Washington Potatoes	0581-0070
947. Oregon-California Potatoes	0581-0112
948. Colorado Potatoes	0581-0111
953. Southeastern Potatoes	0581-0084
958. Idaho-Oregon Onions	0581-0087
959. South Texas Onions	0581-0074
966. Florida Tomatoes	0581-0073
967. Florida Celery	0581-0145
971. South Texas Lettuce	0581-0085
979. South Texas Melons	0581-0079
981. California Almonds	0581-0071
982. Oregon-Washington Filberts/Hazelnuts	0581-0144
984. California Walnuts	0581-0090
985. Spearmint Oil	0581-0065
987. California Dates	0581-0077
989. California Raisins	0581-0083
991. Hops	0581-0086
993. California Dried Prunes	0581-0099

[49 FR 23826, June 8, 1984]

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

Sec.

1000.1 Scope and purpose of Part 1000.
1000.2 Definitions.
1000.3 Market administrator.
1000.4 Continuity and separability of provisions.
1000.5 Handler responsibility for records and facilities.
1000.6 Termination of obligations.
1000.7 OMB control number assigned pursuant to the Paperwork Reduction Act.

AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

SOURCE: 36 FR 9845, May 29, 1971, unless otherwise noted.

§ 1000.1 Scope and purpose of Part 1000.

This part sets forth certain terms, definitions, and provisions which shall be common to and part of each Federal milk marketing order except as specifically defined otherwise, or modified, or otherwise provided, in an individual order.

§ 1000.2 Definitions.

The following terms shall have the following meanings as used in the order:

(a) *Act.* "Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

(b) *Order.* "Order" means the applicable part of Title 7 of the Code of Federal Regulations issued pursuant to section 8c of the Act as a Federal milk marketing order (as amended).

(c) *Department.* "Department" means the U.S. Department of Agriculture.

(d) *Secretary.* "Secretary" means the Secretary of Agriculture of the United States or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated to act in his stead.

(e) *Person.* "Person" means any individual, partnership, corporation, association, or other business unit.

§ 1000.3 Market administrator.

(a) *Designation.* The agency for the administration of the order shall be a market administrator selected by the Secretary and subject to removal at the Secretary's discretion. The market administrator shall be entitled to compensation determined by the Secretary.

(b) *Powers.* The market administrator shall have the following powers with respect to each order under his administration:

(1) Administer the order in accordance with its terms and provisions;

(2) Make rules and regulations to effectuate the terms and provisions of the order;

(3) Receive, investigate, and report complaints of violations to the Secretary; and

(4) Recommend amendments to the Secretary.

(c) *Duties.* The market administrator shall perform all the duties necessary to administer the terms and provisions of each order under his administration, including, but not limited to, the following:

(1) [Reserved]

(2) Employ and fix the compensation of persons necessary to enable him to exercise his powers and perform his duties;

(3) Pay out of funds provided by the administrative assessment, except expenses associated with functions for which the order provides a separate charge, all expenses necessarily incurred in the maintenance and functioning of his office and in the performance of his duties, including his own compensation;

(4) Keep records which will clearly reflect the transactions provided for in the order, and upon request by the Secretary, surrender the records to his successor or such other person as the Secretary may designate;

(5) Furnish information and reports requested by the Secretary and submit his records to examination by the Secretary;

(6) Announce publicly at his discretion, unless otherwise directed by the Secretary, by such means as he deems appropriate, the name of any handler who, after the date upon which he is required to perform such act, has not:

(i) Made reports required by the order;

(ii) Made payments required by the order; or

(iii) Made available records and facilities as required pursuant to § 1000.5;

(7) Prescribe reports required of each handler under the order. Verify such reports and the payments required by the order by examining records (including such papers as copies of income tax reports, fiscal and product accounts, correspondence, contracts, documents or memoranda of the handler, and the records of any other persons that are relevant to the handler's obligation under the order), by examining such handler's milk handling facilities; and by such other investigation as the market administrator deems necessary for the purpose of ascertaining the correctness of any report or any obligation under the order. Reclassify skim milk and butterfat received by any handler if such examination and investigation discloses that the original classification was incorrect.

(8) Furnish each regulated handler a written statement of such handler's accounts with the market administrator promptly each month. Furnish a corrected statement to such handler if verification discloses that the original statement was incorrect; and

(9) Prepare and disseminate publicly for the benefit of producers, handlers, and consumers such statistics and other information concerning operation of the order and facts relevant to the provisions thereof (or proposed provisions) as do not reveal confidential information.

[36 FR 9845, May 29, 1971, as amended at 45 FR 7777, Feb. 5, 1980]

§ 1000.4 Continuity and separability of provisions.

(a) *Effective time.* The provisions of the order or any amendment to the order shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated.

(b) *Suspension or termination.* The Secretary shall suspend or terminate any or all of the provisions of the order whenever he finds that such provision(s) obstructs or does not tend to effectuate the declared policy of the Act. The order shall terminate whenever the provisions of the Act authorizing it cease to be in effect.

(c) *Continuing obligations.* If upon the suspension or termination of any or all of the provisions of the order, there are any obligations arising under the order, the final accrual or ascertainment of which requires acts by any handler, by the market administrator, or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination.

(d) *Liquidation.* (1) Upon the suspension or termination of any or all provisions of the order, the market administrator, or such other liquidating agent designated by the Secretary, shall if so directed by the Secretary liquidate the business of the market administrator's office, dispose of all property in his possession or control, including accounts receivable and execute and deliver all assignments or other instruments necessary or appropriate to effectuate any such disposition; and

(2) If a liquidating agent is so designated, all assets and records of the market administrator shall be transferred promptly to such liquidating agent. If, upon such liquidation, the funds on hand exceed the amounts required to pay outstanding obligations of the office of the market administrator and to pay necessary expenses of liquidation and distribution, such excess shall be distributed to contributing handlers and producers in an equitable manner.

(e) *Separability of provisions.* If any provision of the order or its application to any person or circumstances is held invalid, the application of such provision and of the remaining provisions of the order to other persons or circumstances shall not be affected thereby.

§ 1000.5 Handler responsibility for records and facilities.

Each handler shall maintain and retain records of his operations and make such records and his facilities available to the market administrator. If adequate records of a handler, or of any other persons, that are relevant to the obligation of such handler are not maintained and made available, any skim milk and butterfat required to be reported by such handler for which adequate records are not available shall not be considered accounted for or established as used in a class other than the highest priced class.

(a) *Records to be maintained.* (1) Each handler shall maintain records of his operations (including, but not limited to, records of purchases, sales, processing, packaging, and disposition) as are necessary to verify whether such handler has any obligation under the order, and if so, the amount of such obligation. Such records shall be such as to establish for each plant or other receiving point for each month:

(i) The quantities of skim milk and butterfat contained in, or represented by, products received in any form, including inventories on hand at the beginning of the month, according to form, time, and source of each receipt;

(ii) The utilization of all skim milk and butterfat showing the respective quantities of such skim milk and butterfat in each form disposed of or on hand at the end of the month; and

(iii) Payments to producers, dairy farmers and cooperative associations, including the amount and nature of any deductions and the disbursement of money so deducted.

(2) Each handler shall keep such other specific records as the market administrator deems necessary to verify or establish such handler's obligation under the order.

(b) *Availability of records and facilities.* Each handler shall make available all records pertaining to such handler's operations and all facilities the market administrator finds are necessary for such market administrator to verify the information required to be reported by the order and/or to ascertain such handler's reporting, monetary or other obligation under the order. Each handler shall permit the market administrator to weigh, sample, and test milk and milk products and observe plant operations and equipment and make available to the market administrator such facilities as are necessary to carry out his duties.

(c) *Retention of records.* All records required under the order to be made available to the market administrator shall be retained by the handler for a period of 3 years to begin at the end of the month to which such records pertain. If, within such 3-year period, the market administrator notifies the handler in writing that the retention of such records, or of specified records, is necessary in connection with a proceeding under section 8c(15)(A) of the Act or a court action specified in such notice, the handler shall retain such records, or specified records, until further written notification from the market administrator. The market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

§ 1000.6 Termination of obligations.

The provisions of this section shall apply to any obligation under the order for the payment of money:

(a) Except as provided in paragraphs (b) and (c) of this section, the obligation of any handler to pay money required to be paid under the terms of the order shall terminate 2 years after the last day of the month during which the market administrator receives the handler's report of receipts and utilization on which such obligation is based, unless within such 2-year period, the market administrator notifies the handler in writing that such money is due and payable. Service of such written notice shall be complete upon mailing to the handler's last known address and it shall contain but need not be limited to the following information:

(1) The amount of the obligation;

(2) The month(s) on which such obligation is based; and

(3) If the obligation is payable to one or more producers or to a cooperative association (except an obligation to be prorated to producers under an individual handler pool), the name of such producer(s) or such cooperative association, or if the obligation is payable to the market administrator, the account for which it is to be paid;

(b) If a handler fails or refuses, with respect to any obligation under the order, to make available to the market administrator all records required by the order to be made available, the market administrator may notify the handler in writing, within the 2-year period provided for in paragraph (a) of this section, of such failure or refusal. If the market administrator so notifies a handler, the said 2-year period with respect to such obligation shall not begin to run until the first day of the month following the month during which all such records pertaining to such obligation are made available to the market administrator;

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under the order to pay money shall not be terminated with respect to any transaction involving fraud or willful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed; and

(d) Unless the handler files a petition pursuant to section 8c(15)(A) of the Act and the applicable rules and regulations (7 CFR 900.50 et seq.) within the applicable 2-year period indicated below, the obligation of the market administrator:

(1) To pay a handler any money which such handler claims to be due him under the terms of the order shall terminate 2 years after the end of the month during which the skim milk and butterfat involved in the claim were received; or

(2) To refund any payment made by a handler (including a deduction or offset by the market administrator) shall terminate 2 years after the end of the month during which payment was made by the handler.

§ 1000.7 OMB control number assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of Title 44 U.S.C. Chapter 35 and have been assigned OMB Control No. 0581-0032.

[49 FR 7102, Feb. 27, 1984]

PART 1001—MILK IN THE NEW ENGLAND MARKETING AREA

Subpart—Order Regulating Handling

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1001.86 Deduction for marketing services.

AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

SOURCE: 41 FR 8357, Feb. 26, 1976, unless otherwise noted.

Subpart—Order Regulating Handling

GENERAL PROVISIONS

§ 1001.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1001.2 New England marketing area.

"New England marketing area," hereinafter called the "marketing area," means all territory within the boundaries of the places set forth below, all waterfront facilities connected therewith and craft moored thereat, and all territory therein occupied by any governmental installation, institution, or other similar establishment:

CONNECTICUT

All of the State of Connecticut.

MASSACHUSETTS

Counties:
- Barnstable.
- Bristol.
- Essex.
- Franklin (except the towns of New Salem, Orange, and Warwick).

Hampden (except the towns of Brimfield, Monson, Palmer, and Wales).
Hampshire (except the town of Ware).
Middlesex.
Norfolk.
Plymouth.
Suffolk.
Worcester (except the towns of Athol, Barre, Douglas, East Brookfield, Hardwick, New Braintree, North Brookfield, Northbridge, Petersham, Philipston, Royalston, Templeton, Uxbridge, Warren, West Brookfield, and Winchendon).

NEW HAMPSHIRE

Counties:
Belknap.
Cheshire.
Grafton (the towns of Ashland, Bridgewater, Bristol, Holderness, and Plymouth only).
Hillsborough.
Merrimack.
Rockingham.
Stafford.
Sullivan (except the town of Plainfield).

RHODE ISLAND

All cities and towns except New Shoreham (Block Island).

VERMONT

Counties:
Bennington (the towns of Landgrove, Peru, and Winhall only).
Windham (except Somerset).
Windsor (the towns of Andover, Baltimore, Cavendish, Chester, Ludlow, Plymouth, Reading, Springfield, Weathersfield, Weston, West Windsor, and Windsor only).

[41 FR 8357, Feb. 26, 1976, as amended at 48 FR 32160, July 14, 1983]

§ 1001.3 Route disposition.

"Route disposition" means distribution of Class I milk by a handler to retail or wholesale outlets, which include vending machines but do not include plants or distribution points. The route disposition of a handler shall be attributed to the processing and packaging plant from which the Class I milk is moved to retail or wholesale outlets without intermediate movement to another processing and packaging plant.

§ 1001.4 Plant.

"Plant" means the land and buildings, together with their surroundings, facilities, and equipment, whether owned or operated by one or more persons, constituting a single operating unit or establishment for the receiving, processing, or packaging of milk or milk products. The term "plant" shall not include:

(a) Distribution points (separate premises used primarily for the transfer to vehicles of packaged fluid milk products moved there from processing and packaging plants); or

(b) Bulk reload points (separate premises used for the purpose of transferring bulk milk from one tank truck to another tank truck while en route from dairy farmers' farms to a plant). If stationary storage tanks are used for transferring milk at the premises, the operator of the facility shall make an advance written request to the market administrator that the facility be treated as a reload point, otherwise it shall be a plant. The cooling of milk, collection or testing of samples, and washing and sanitizing of tank trucks at the premises shall not disqualify it as a bulk reload point.

[43 FR 17459, Apr. 25, 1978, as amended at 46 FR 58642, Dec. 3, 1981]

§ 1001.5 Pool plant.

"Pool plant" means any plant that meets the applicable conditions for pool plant status under § 1001.5a, § 1001.5b, or § 1001.5c. However, if the market administrator determines that a specified proportion or quantity of the receipts from dairy farmers and of pool milk from other sources handled at a plant is not available for Class I use because there is in force an unconditional contract for the plant to supply fluid milk products for Class II use, the plant shall not be a pool plant for the month in which the market administrator notifies the handler of the determination and for any subsequent month in which the contract is in force for any part of the month.

§ 1001.5a Distributing plant.

Each processing and packaging plant (other than a producer-handler's plant under any Federal order, a regulated plant under another Federal order, or an exempt distributing plant under § 1001.6(b)) shall be a pool distributing plant in any month in which it meets the conditions specified in this section. Receipts and disposition of filled milk shall be excluded in determining whether a plant has met these conditions.

(a) Its total Class I disposition in the month, or in either of the 2 preceding months, is not less than 40 percent of its total receipts of fluid milk products in the corresponding month.

(b) Its route disposition in the marketing area in the month:

(1) Is not less than 10 percent of its total receipts of fluid milk products;

(2) Exceeds its route disposition in any other Federal marketing area; and

(3) Exceeds 700 quarts on any day or a daily average of 300 quarts.

§ 1001.5b Supply plant.

Each plant (other than a plant described in paragraph (e) of this section) shall be a pool supply plant in any month in which it meets the conditions specified in paragraph (a), and in paragraph (b), (c), or (d), of this section. Receipts and disposition of filled milk shall be excluded in determining whether a plant has met these conditions. For the purposes of this section, milk received at a plant from a cooperative association in its capacity as a handler under § 1001.9(d) shall be considered as having been received at that plant from dairy farmers' farms.

(a) It is a plant at which facilities are maintained and used for washing and sanitizing cans and to which milk is moved from dairy farmers' farms in cans and is there accepted, weighed or measured, sampled, and cooled, or it is a plant to which milk is moved from dairy farmers' farms in tank trucks.

(b) It is a plant from which in any month of August and December at least 15 percent, and in any month of September through November at least 25 percent, of its total receipts of milk from dairy farmers' farms is shipped as fluid milk products, other than as diverted milk, to pool distributing plants.

(c) For any month of August, through December, it is one of a group of plants that meets the conditions specified in this paragraph.

(1) The handler's written request for continuation of pool supply plant status, which the plant held under his operation in the preceding month, is received by the market administrator on or before the 16th day of the month.

(2) The group of plants, considered as a unit, meets the shipping requirements specified in paragraph (b) of this section.

(3) To qualify as a pool supply plant under this paragraph in December of any year, the plant, considered individually, shall have shipped at least 5 percent of its total receipts of milk from dairy farmers' farms as fluid milk products, other than as diverted milk, to pool distributing plants in one of the months of August through December of that year.

(4) In the event of the failure of a group of plants to meet fully the requirements of paragraph (c)(2) of this section, termination of pool supply plant status shall be limited to the least number of plants which will result in the remaining supply plants meeting the requirements of paragraph (c)(2) of this section. If such termination becomes necessary, the handler shall be permitted to designate which plants shall continue to have pool plant status for the month.

(5) For the purposes of this paragraph, any supply plant operated by a cooperative association that is also a handler under § 1001.9(d) may be considered as one of a group of plants. In that event, the group's total receipts of milk from dairy farmers' farms shall be the total of such receipts by the association other than at any of its plants that is not one of the group, and the group's qualifying shipments shall consist of the qualifying shipments from the plants in the group plus the quantity of milk moved by the association in its capacity as a handler under § 1001.9(d) from farms of its members to pool distributing plants.

(d) For any month of January through July, it is a plant from which at least 15 percent of its total receipts of milk from dairy farmers' farms is shipped as fluid milk products, other than as diverted milk, to pool distributing plants or it is a plant that meets the requirements for automatic pool plant status specified in this paragraph. The automatic pool plant status of a plant shall be revoked for any month for which the market administrator has received the handler's written request for revocation on or before the 16th day of that month. In that event, the plant shall not have automatic pool plant status in any subsequent month of the current January through July period.

(1) The plant was a pool supply plant under this order in each of the preceding months of August through December; or

(2) The plant was a pool supply plant under this order in at least two of the preceding months of August through December and would have been such a plant in all other months in that period had it not been a pool plant under the New York-New Jersey Federal order.

(e) No plant shall be a pool supply plant in any month in which it is operated as:

(1) A pool distributing plant;

(2) An exempt distributing plant under § 1001.6(b);

(3) The plant of a producer-handler under any Federal order;

(4) A regulated plant under another Federal order if its Class I disposition of fluid milk products, except filled milk in the marketing area regulated by that order exceeds its shipments of fluid milk products, except filled milk, to pool distributing plants under this order; or

(5) A plant designated as a regular pool plant under the New York-New Jersey Federal order.

[41 FR 8357, Feb. 26, 1976, as amended at 43 FR 17460, Apr. 25, 1978]

§ 1001.5c Cooperative association plant located in the marketing area.

Each plant, other than a plant operated as a pool distributing plant or a pool supply plant, that is located in the marketing area and operated by a cooperative association shall be a pool plant in any month in which its route disposition does not exceed 2 percent of its total receipts of fluid milk products. Receipts and disposition of filled milk shall be excluded in determining whether a plant has met these conditions.

§ 1001.6 Exempt distributing plant.

"Exempt distributing plant" means:

(a) A plant, other than a pool supply plant or a regulated plant under another Federal order, that meets all the requirements for status as a pool distributing plant except that its route disposition (exclusive of filled milk) in the marketing area in the month does not exceed 700 quarts on any day or a daily average of 300 quarts.

(b) A plant that is operated by a governmental agency and from which there is route disposition in the marketing area.

§ 1001.7 Distributing plant for unregulated markets.

"Distributing plant for unregulated markets" means a processing and packaging plant from which the route disposition outside any Federal marketing area amounts to more than 50 percent of its total receipts of fluid milk products during the month. The term shall not apply to a pool plant, an exempt distributing plant, a producer-handler's plant under any Federal order, or a regulated plant under another Federal order.

§ 1001.8 Regulated plant under another Federal order.

"Regulated plant under another Federal order" means a pool plant under another Federal order or any other plant at which all fluid milk products handled become subject to the classification and pricing provisions of another Federal order.

§ 1001.9 Handler.

"Handler" means:

(a) Any person who operates a pool plant;

(b) Any person who operates any other plant, or a pool bulk tank unit as defined under another Federal order, from which fluid milk products are disposed of, directly or indirectly, in the marketing area;

(c) Any person who does not operate a plant but who engages in the business of receiving fluid milk products for resale and distributes to retail or wholesale outlets packaged fluid milk products received from any plant described in paragraph (a) or (b) of this section; or

(d) Any cooperative association with respect to the milk that is moved from farms in tank trucks operated by, or under contract to, the association to pool plants or as diverted milk to nonpool plants, other than a producer-handler's plant, for the account of, and at the direction of, the association. The association shall be considered as the handler who received the milk from the dairy farmers. However, the cooperative association shall not be the handler with respect to the milk moved from any farm if the association and the operator of the pool plant to which milk from such farm is moved both submit a request in writing, on or before the due date for filing the monthly reports of receipts and utilization, that the operator of the pool plant be considered as the handler who received the milk from the dairy farmer, and the pool plant operator's request state that he is purchasing the milk from such farm on the basis of the farm bulk tank measurement readings and the butterfat tests of samples of the milk taken from the farm bulk tank.

§ 1001.10 Producer-handler.

"Producer-handler" means any person who, during the month, is both a dairy farmer and a handler and who meets the conditions specified in each of the paragraphs of this section.

(a) He provides as his own enterprise and at his own risk the maintenance, care, and management of the dairy herd and other resources and facilities that he uses to produce milk, to process and package such milk at his own plant, and to distribute it as route disposition.

(b) His own route disposition constitutes the majority of the route disposition from his plant.

(c) The quantity of route disposition in the marketing area from his plant is greater than in any other Federal marketing area.

(d) He receives no fluid milk products except from his own production and pool plants. If his receipts from own production and the total route disposition from his plant each exceed 4,300 pounds per day for the month, his receipts from pool plants are not in excess of 2 percent of his receipts from own production. For the purposes of this paragraph, his receipts of fluid milk products shall include receipts from plants of other persons at all retail and wholesale outlets that are located in a Federal marketing area and operated by him, an affiliate, or any person who controls or is controlled by him.

§ 1001.11 Dairy farmer for other markets.

"Dairy farmer for other markets" means any dairy farmer described in this section. For the purposes of this section, the acts of any person who is an affiliate of, or who controls or is controlled by, a handler or dealer shall be considered as having been performed by the handler or dealer. Receipts from a "dairy farmer for other markets" under paragraphs (a), (b), and (c) of this section shall be considered as receipts from the unregulated plant at which the greatest quantity of his milk was received in the most recent month.

(a) The term includes a dairy farmer with respect to milk that is purchased from him during the month by a dealer who operates a plant but does not operate a pool plant, if the milk is moved to a pool plant directly from the dairy farmer's farm. The term shall not apply to the dairy farmer, however, if all the nonpool milk purchased from him during the month by the same dealer is a receipt of producer milk under the provisions of another Federal order or will be such if the dairy farmer is a producer under this order.

(b) The term includes a dairy farmer with respect to milk that is purchased from him by a handler and moved to a pool plant or that is purchased from him by a cooperative association in its capacity as a handler under § 1001.9(d), if that handler caused milk from the same farm to be moved as nonpool milk to any plant during the same month. The term shall not apply to the dairy farmer, however, if all the nonpool milk is a receipt of producer milk under the provisions of another Federal order or will be such if the dairy farmer is a producer under

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this order or if all the nonpool milk is excluded from producer milk under § 1001.15.

(c) The term includes a dairy farmer with respect to milk that is received from him by a handler at a pool plant or that is purchased from him by a cooperative association in its capacity as a handler under § 1001.9(d) during any of the months of January through July, if the handler caused nonpool milk from the same farm to be received during any of the preceding months of August through December at a plant that is not a pool plant under any Federal order in the current month. The term shall not apply to the dairy farmer, however, if all the nonpool milk was a receipt of producer milk under the provisions of another Federal order or represented receipts from own production by a producer-handler under any Federal order, or was excluded from producer milk under § 1001.15.

(d) Notwithstanding the provisions of paragraphs (a), (b), and (c) of this section, the term shall apply to any dairy farmer with respect to milk moved from his farm to a handler's pool plant or purchased from him by a cooperative association in its capacity as a handler under § 1001.9(d) during any month in which milk from that farm was received as base milk under another Federal order.

[41 FR 8357, Feb. 26, 1976, as amended at 43 FR 17460, Apr. 25, 1978]

§ 1001.12 Producer.

"Producer" means a dairy farmer who produces milk that is moved, other than in packaged form, from his farm to a pool plant, or to any other plant as diverted milk. However, the term shall not include:

(a) A producer-handler under any Federal order;

(b) A dairy farmer with respect to milk caused to be moved from his farm to a pool plant under this order by a handler under another Federal order if all of the dairy farmer's milk so received is considered as a receipt from a producer under the provisions of the other Federal order;

(c) A dairy farmer for other markets;

(d) A dairy farmer who is a local or state government that has nonproducer status for the month under § 1001.16(c);

(e) A dairy farmer who is a governmental agency that is operating an exempt distributing plant under § 1001.6(b);

(f) A dairy farmer with respect to salvage product assigned under § 1001.45(e);

(g) A dairy farmer with respect to milk that is excluded from producer milk under § 1001.15; or

(h) A dairy farmer with respect to milk that a handler causes to be moved from the dairy farmer's farm to a regulated plant under another Federal order if any portion of such dairy farmer's milk so moved is assigned to Class I milk under the provisions of such other order and all of the dairy farmer's milk so moved is considered as producer milk under the other order.

§ 1001.13 Producer milk.

"Producer milk" means milk that the handler has received from producers. The quantity of milk received by a handler from producers shall include any milk of a producer that was not received at any plant but which the handler or an agent of the handler has accepted, measured, sampled, and transferred from the producer's farm tank into a tank truck during the month. Such milk shall be considered as having been received at the pool plant at which other milk from the same farm of that producer is received by the handler during the month, except that in the case of a cooperative association in its capacity as a handler under § 1001.9(d), the milk shall be considered as having been received at a plant in the zone location of the pool plant, or pool plants within the same zone, to which the greatest aggregate quantity of the milk of the cooperative association in such capacity was moved during the current month or the most recent month.

§ 1001.14 Pool milk.

"Pool milk" means fluid milk products (other than exempt milk) received or disposed of as specified in this section, except that with respect to filled milk the term shall include only the quantity proved to have been made from other fresh fluid milk products.

(a) Receipts of producer milk;

(b) The following receipts of fluid milk products at pool plants (exclusive of receipts from other pool plants, producer-handlers under any Federal order, exempt distributing plants, and receipts from regulated plants and pool bulk tank units under other Federal orders that are classified and priced under the other orders):

(1) Receipts at pool distributing plants from plants located outside the New England States and beyond zone 40;

(2) Receipts at pool plants, other than pool distributing plants, to the extent assigned to Class I milk under § 1001.45(g), from plants located outside the New England States and beyond zone 40; and

(3) Receipts at pool plants, to the extent assigned to Class I milk under § 1001.45(h), from plants located within one of the New England States or in zone 40 or a nearer zone, exclusive of bulk fluid milk products from distributing plants for unregulated markets; and

(c) Route disposition in the marketing area from any processing and packaging plant (except a pool plant, a producer-handler's plant under any Federal order, an exempt distributing plant, or a regulated plant under another Federal order). In determining the quantity of pool milk under this paragraph, the total quantity of route disposition in the marketing area from the plant first shall be reduced by the quantity of fluid milk products received at the plant during the month that is classified and priced as Class I milk or the equivalent thereof under any marketwide pool Federal order and that is not used to offset route disposition in any other Federal marketing area.

§ 1001.15 Diverted milk.

"Diverted milk" means milk, other than that excluded under § 1001.12 from being considered as received from a producer, that meets the conditions set forth in paragraph (a) or (b) of this section and is not excluded from diverted milk under paragraph (c) of this section.

(a) Milk that a handler in his capacity as the operator of a pool plant reports as having been moved from a dairy farmer's farm to the pool plant, but which he caused to be moved from the farm to another plant that is not a plant of a producer-handler, if the handler specifically reports such movement to the other plant as a movement of diverted milk, and the conditions of paragraph (a) (1) or (2) of this section have been met. Milk that is diverted milk under this paragraph shall be considered to have been received at the pool plant from which it was diverted, but for pricing purposes the location adjustments for the zone location specified in § 1001.53 shall be used.

(1) During any 2 months subsequent to July of the preceding calendar year, or during the current month, on more than half of the days on which the handler caused milk to be moved from the dairy farmer's farm during the month, all of the milk that the handler caused to be moved from that farm was physically received as producer milk at the handler's pool plant or at another of the handler's pool plants that is no longer operated as a plant.

(2) During the current month and not more than 5 other months subsequent to July of the preceding calendar year, milk from the dairy farmer's farm was received at or diverted from the handler's pool plant as producer milk, and during the current month all of the milk from that farm that the handler reported as diverted milk was moved from the farm in a tank truck in which it was intermingled with milk from other farms, the milk from a majority of which farms was diverted from the same pool plant in accordance with the preceding provisions of this paragraph.

(b) Milk that a cooperative association in its capacity as a handler under § 1001.9(d) caused to be moved from a dairy farmer's farm to a nonpool plant that is not a plant of a producer-handler if the association specifically reports the movement to such plant as a movement of diverted milk, and the conditions of paragraph (b) (1) or (2)

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of this section have been met. Milk that is diverted under this paragraph shall be considered to have been received by the cooperative association in its capacity as a handler under § 1001.9(d), but for pricing purposes the location adjustments for the zone location specified in § 1001.53 shall be used.

(1) During any 2 months subsequent to July of the preceding calendar year, or during the current month, on more than half of the days on which the cooperative association in its capacity as a handler under § 1001.9(d) caused milk to be moved from the farm as producer milk during the month, all of the milk that the association caused to be moved from the farm was physically received at a pool plant.

(2) During the current month and not more than 5 other months subsequent to July of the preceding calendar year, the cooperative association in its capacity as a handler under § 1001.9(d) caused milk to be moved from the dairy farmer's farm as producer milk, and during the current month all of the milk from that farm that the cooperative association in its capacity as a handler under § 1001.9(d) reported as diverted milk was moved from the farm in a tank truck in which it was intermingled with milk from other farms, the milk from a majority of which farms was diverted by the association in accordance with the preceding provisions of this paragraph.

(c) Milk moved, as described in paragraphs (a) and (b) of this section, from dairy farmers' farms to nonpool plants in excess of 35 percent in the months of September through November and 45 percent in other months, of the total quantity of producer milk received (including diversions) by the handler during the month shall not be diverted milk. Such milk, and any other milk reported as diverted milk that fails to meet the requirements set forth in this section, shall be considered as having been moved directly from the dairy farmers' farms to the plant of physical receipt, and if that plant is a nonpool plant the milk shall be excluded from producer milk. If the handler fails to designate the dairy farmers whose milk is to be so excluded, the entire quantity of milk that the handler caused to be moved from dairy farmers' farms directly to nonpool plants during the month shall be excluded from producer milk.

[41 FR 8357, Feb. 26, 1976, as amended at 43 FR 17460, Apr. 25, 1978; 46 FR 58642, Dec. 3, 1981]

§ 1001.16 Exempt milk.

"Exempt milk" means:

(a) Fluid milk products received at a pool plant in bulk from a nonpool plant to be processed and packaged, for which an equivalent quantity of packaged fluid milk products is returned to the operator of the nonpool plant during the same month, if the receipt of bulk fluid milk products and return of packaged fluid milk products occur during an interval in which the facilities of the nonpool plant at which the fluid milk products are usually processed and packaged are temporarily unusable because of fire, flood, storm, or similar extraordinary circumstances completely beyond the dealer's control;

(b) Packaged fluid milk products received at a pool plant from a nonpool plant in return for an equivalent quantity of bulk fluid milk products moved from a pool plant for processing and packaging during the same month, if the movement of bulk fluid milk products and receipt of packaged fluid milk products occur during an interval in which the facilities of the pool plant at which the fluid milk products are usually processed and packaged are temporarily unusable because of fire, flood, storm, or similar extraordinary circumstances completely beyond the handler's control; and

(c) Milk received at a pool plant in bulk from the dairy farmer who produced it, to the extent of the quantity of any packaged fluid milk products returned to the dairy farmer, if:

(1) The dairy farmer is a State or local government that is not engaged in the route disposition of any of the returned products; and

(2) The dairy farmer has, by written notice to the market administrator and the receiving handler, elected nonproducer status for a period of not less than 12 months beginning with the

month in which the election was made and continuing for each subsequent month until canceled in writing, and the election is in effect for the current month.

§ 1001.17 Fluid milk product.

"Fluid milk product" means milk, skimmed milk, flavored milk or skimmed milk, cultured skimmed milk, buttermilk, filled milk, concentrated milk, and any mixture of milk or skimmed milk and cream containing less than 10 percent butterfat. The term includes these products in fluid, frozen, fortified, or reconstituted form but does not include sterilized products in hermetically sealed containers and such products as eggnog, yogurt, whey, ice cream mix, ice milk mix, milk shake base mix, evaporated or condensed milk or skimmed milk (in either plain or sweetened form), and any product that contains 6 percent or more nonmilk fat (or oil). Fluid milk products that have been placed in containers for disposition to retail or wholesale outlets are referred to in this order as packaged fluid milk products.

§ 1001.18 Cream.

"Cream," for purposes of this order, means that portion of milk, containing not less than 10 percent butterfat, that rises to the surface of milk on standing, or is separated from it by centrifugal force. The term also includes soured cream, frozen cream, fortified cream, reconstituted cream, and any mixture of milk or skimmed milk and cream containing 10 percent or more of butterfat.

§ 1001.19 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skimmed milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1001.20 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, known as the "Capper-Volstead Act";

(b) To have full authority in the sale of milk of its members; and

(c) To be engaged in making collective sales of, or marketing, milk or its products for its members.

REPORTS

§ 1001.30 Monthly reports of receipts and utilization.

On or before the 8th day after the end of the month, or not later than the 10th day if the report is delivered in person to the office of the market administrator, each handler with respect to each of his pool plants or any other plant (except an exempt distributing plant under § 1001.6(b)) from which there is route disposition in the marketing area, and each cooperative association in its capacity as a handler under § 1001.9(d), shall file a report for the month with the market administrator. Such report shall be in the detail and on forms prescribed by the market administrator and shall show the quantities of skim milk and butterfat contained in:

(a) Receipts of milk and milk products in the form of:

(1) Producer milk (including the specific quantities of diverted milk and receipts from the handler's own production);

(2) Pool milk other than producer milk;

(3) Fluid milk products and cream from all other plants;

(4) Milk from cooperative associations in their capacity as handlers under § 1001.9(d); and

(5) Fluid milk products and cream from all other sources (including the quantities of fluid milk products or cream reconstituted from other milk products and the quantities of other milk products used to fortify fluid milk products or cream);

(b) Inventories of fluid milk products and cream at the beginning and at the end of the month;

(c) The respective quantities of fluid milk products and cream sold, distributed, used, or otherwise disposed of, and classified in accordance with the provisions of §§ 1001.40 through 1001.42; and

(d) Bulk milk received at a handler's pool plant from a cooperative association in its capacity as the operator of a pool plant or as a handler under § 1001.9(d), if such milk was rejected by the handler subsequent to his receipt of the milk on the basis that it was not of marketable quality at the time the milk was delivered to the handler's plant, and such milk was removed from the plant in bulk form by the cooperative association and was replaced with other milk from the association. Except for purposes of this paragraph and § 1001.31(c), such milk that was so removed from the handler's plant shall be treated for all other purposes of the order as though it had not been delivered to and received at the handler's plant.

§ 1001.31 Other reports of receipts and utilization.

(a) Each handler who is not required to file monthly reports of receipts and utilization under § 1001.30 shall file with the market administrator reports relating to his receipts and utilization of milk and milk products at the time and in the manner prescribed by the market administrator.

(b) Each handler who dumps fluid milk products at a pool plant shall:

(1) Give the market administrator, at his request and in accordance with instructions by him, advance notice of the handler's intention to dump such products and the quantities involved; and

(2) Submit to the market administrator at the time and in the manner prescribed by him such detailed reports of dumpage as the market administrator requests.

(c) Each handler who intends to have a receipt of unmarketable milk replaced with other milk in the manner described under § 1001.30(d) shall give the market administrator, at his request and in accordance with instructions by him, advance notice of the handler's intention to have such milk replaced.

§ 1001.32 Reports regarding individual producers and dairy farmers.

(a) Each handler shall report on or before the 15th day after the end of each month the information required by the market administrator with respect to producer additions, producer withdrawals, changes in farm locations, and changes in the name of farm operators.

(b) Each handler that is not a cooperative association, upon request from any such association, shall furnish it with information with respect to each of its producer members from whose farm the handler begins, resumes, or stops receiving milk at his pool plant. Such information shall include the applicable date, the producer-member's post office address and farm location, and, if known, the plant at which his milk was previously received, or the reason for the handler's failure to continue receiving milk from his farm. In lieu of providing the information directly to the association, the handler may authorize the market administrator to furnish the association with such information, derived from the handler's reports and records.

(c) Each handler shall submit to the market administrator, within 10 days after his request made not earlier than 20 days after the end of the month, his producer payroll for the month, which shall show for each producer:

(1) The daily and total pounds of milk delivered and its average butterfat test; and

(2) The net amount of the handler's payments to the producer, with the prices, deductions, and charges involved.

§ 1001.33 Notices to producers.

Each handler shall furnish each producer from whom he receives milk the following information regarding the weight and butterfat test of the milk:

(a) Whenever he receives milk from the producer on the basis of farm bulk tank measurements, the handler shall give the producer at the time the milk is picked up at the farm a receipt indicating the measurement and the equivalent pounds of milk received;

(b) Whenever he receives milk from the producer on a basis other than farm bulk tank measurements, the handler shall give the producer within 3 days after receipt of the milk a written notice of the quantity so received;

(c) If butterfat tests of the producer's milk are determined from fresh milk samples, the handler shall give the producer within 10 days after the end of each month a written notice of the producer's average butterfat test for the month. Such notice shall not be required if the handler has given the producer a written notice of the butterfat test for each of the sampling periods within the month; and

(d) If butterfat tests of the producer's milk are determined from composite milk samples, the handler shall give the producer within 7 days after the end of each sampling period a written notice of the producer's average butterfat test for the period.

CLASSIFICATION OF MILK

§ 1001.40 Classes of utilization.

Except as provided in §§ 1001.41 and 1001.42, all skim milk and butterfat required to be reported by a handler under § 1001.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat (including that used to produce concentrated milk):

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraph (b) of this section; and

(2) Not established as Class II milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat for which the handler who first receives the skim milk and butterfat proves that such were:

(1) Disposed of, or in inventory at the end of the month, in the form of cream;

(2) Used to produce milk products other than fluid milk products or cream;

(3) Disposed of in bulk fluid milk products to manufacturing establishments such as bakeries, candy factories, soup factories, and similar establishments at which the fluid milk products were used in the manufacture of food products other than milk products;

(4) In fluid milk products in inventory at the end of the month to the extent not classified as Class I milk under § 1001.41;

(5) Disposed of in fluid milk products for livestock feed;

(6) In fluid milk products dumped or discarded, if the conditions imposed under § 1001.31(b) have been met;

(7) In fluid milk products destroyed or lost under extraordinary circumstances; and

(8) In shrinkage not in excess of 2 percent of the respective quantities of skim milk and butterfat in receipts of fluid milk products and cream, exclusive of diverted milk and inventory at the beginning of the month. The shrinkage on the milk of a cooperative association in its capacity as a handler under § 1001.9(d) that is received at a pool plant shall be classified as Class II milk up to the entire 2 percent maximum rate if the operator of the pool plant notifies the market administrator in writing, on or before the date on which its receipt is required to be reported under § 1001.30, that he has agreed to purchase the milk on the basis of farm bulk tank measurement readings and of the butterfat tests of samples of the milk taken from the farm bulk tank. Otherwise, the shrinkage on such receipts at a pool plant shall be classified as Class II milk only up to 1.5 percent thereof and shrinkage of up to 0.5 percent on the milk so moved shall be classified as Class II milk to the cooperative association in its capacity as a handler under § 1001.9(d).

§ 1001.41 Classification of inventories.

(a) A handler who operates a pool distributing plant may claim a Class I classification of some or all inventories of fluid milk products at the end of each month pending final disposition of such fluid milk products.

(b) If a handler does not claim a Class II classification of any fluid milk products received, inventories of fluid milk products at the end of each month shall be classified as Class I milk pending final disposition of such fluid milk products.

[46 FR 58642, Dec. 3, 1981]

§ 1001.42 Classification of fluid milk products moved to plants.

Fluid milk products moved from a pool plant to any other plant, or by a cooperative association in its capacity as a handler under § 1001.9(d) to any plant, shall be classified as follows:

(a) As Class I milk if transferred in packaged form to any other plant;

(b) As Class I milk if transferred from a pool plant to the plant of a producer-handler under any Federal order;

(c) As Class I milk if moved from a pool plant to an exempt distributing plant under § 1001.6(b);

(d) In the class to which assigned under § 1001.47 if moved in bulk form to any pool plant;

(e) In the class to which assigned under the other order if moved in bulk form to a regulated plant under another Federal order;

(f) As Class I milk, to the extent of the total quantity of the same form of fluid milk products so moved that is utilized as Class I milk at the plant to which moved, if moved in bulk form to any plant other than a plant to which movements of bulk fluid milk products are subject to classification under the preceding paragraphs of this section, and as Class II milk to the extent of any remainder; and

(g) As Class I milk if moved in bulk form to any plant other than a pool plant or a regulated plant under another Federal order and thence to another plant, not regulated under a Federal order, located outside the New England States and New York State.

§ 1001.43 Assignment of receipts to classes in general.

(a) The total quantities of skim milk and butterfat received during the month at each pool plant and by each cooperative association in its capacity as a handler under § 1001.9(d) (including those quantities in inventory at the beginning of the month) shall be assigned separately, in the manner and sequence provided in §§ 1001.44 through 1001.47, to the respective quantities of skim milk and butterfat classified as Class I milk and Class II milk under §§ 1001.40 through 1001.42.

(b) Except as provided in § 1001.46, whenever receipts have been assigned under §§ 1001.44 through 1001.47 to the remaining pounds in a class, all remaining receipts shall be assigned to the other class.

(c) If receipts from more than one plant are to be assigned under a paragraph in § 1001.45 or § 1001.47, the receipts shall be assigned in sequence according to the zone locations of the plants, beginning with the plant in the lowest numbered zone for assignments to Class I milk and beginning with the plant in the highest numbered zone for assignments to Class II milk.

(d) Prior to the assignment of receipts to classes under §§ 1001.44 through 1001.47, there shall be assigned to Class I and Class II milk the quantities of Class I and Class II milk, respectively, which are diverted in accordance with § 1001.15 and classified in accordance with § 1001.42.

[41 FR 8357, Feb. 26, 1976, as amended at 43 FR 17460, Apr. 25, 1978; 43 FR 49971, Oct. 26, 1978]

§ 1001.44 Initial assignments to Class I milk.

(a) Assign to Class I milk the receipts of exempt milk.

(b) Assign to Class I milk the receipts of packaged fluid milk products from regulated plants under other Federal orders, if the fluid milk products are classified and priced under the other orders as Class I milk or the equivalent thereof or in accordance with their assignment under this order.

(c) Assign to Class I milk the receipts of packaged fluid milk products from other pool plants.

(d) Assign to Class I milk the fluid milk products in inventory at the beginning of the month that were classified as Class I milk in the preceding month.

§ 1001.45 Initial assignments to Class II milk.

(a) Assign to Class II milk the quantities of fluid milk products or cream reconstituted from other milk products and the quantities of other milk products used to fortify fluid milk products or cream. If the quantity of any reconstituted product is not known, the quantity assigned shall be the quantity of butterfat used in the reconstitution and the quantity of skim milk required to produce the milk products so used. Any unaccounted-for plain condensed milk or skimmed milk, dry whole milk, or nonfat dry milk shall be considered to have been used in the reconstitution of fluid milk products.

(b) Assign to Class II milk the quantities of cream in inventory at the beginning of the month and received during the month.

(c) Assign to Class II milk the receipts of fluid milk products (other than exempt milk) from a local or State government that has elected nonproducer status for the month under § 1001.16(c) and receipts from dairy farmers for other markets under § 1001.11(d).

(d) Assign to Class II milk the fluid milk products in inventory at the beginning of the month that were not assigned under § 1001.44(d)

(e) Assign to Class II milk the receipts of fluid milk products from producer-handlers under any Federal order, from farms of a governmental agency that is operating an exempt distributing plant under § 1001.6(b), and from exempt distributing plants; and receipts from dairy farmers which are rejected and segregated in the handler's normal operation for receiving milk, and which receipts are accepted and disposed of by the handler as salvage product rather than as milk.

(f) Assign to Class II milk the receipts of bulk fluid milk products from distributing plants for unregulated markets located within one of the New England States or in Zone 40 or a nearer zone.

(g) At pool plants other than pool distributing plants, assign to Class II milk the receipts of fluid milk products from plants located outside the New England States and beyond Zone 40, if the fluid milk products are not classified and priced under any Federal order.

(h) Assign to Class II milk the receipts of fluid milk products from plants located within one of the New England States or in Zone 40 or a nearer zone, except receipts assigned under paragraph (f) of this section and receipts that are classified and priced under any Federal order.

§ 1001.46 Special assignments at pool distributing plants.

(a) At pool distributing plants, assign to Class II milk, to the extent of the remaining pounds in that class, the receipts of bulk fluid milk products from each regulated plant or handler under another Federal order, if both the shipper and the operator of the receiving plant have requested such Class II classification and assignment.

(b) At pool distributing plants, assign in the manner provided in paragraph (b) (1) and (2) of this section any remaining receipts of bulk fluid milk products from each regulated plant or handler under another Federal order, if such receipts are classified and priced under the other order as Class I milk or the equivalent thereof or in accordance with their assignment under this order.

(1) Assign such receipts to Class I milk and Class II milk in proportion to the estimated percentages of skim milk and butterfat, respectively, in each class in producer milk of all handlers for the month as announced under § 1001.48, or in proportion to the remaining pounds of skim milk and butterfat, respectively, in each class at all of the handler's pool plants, whichever procedure results in the greater quantity of skim milk and butterfat combined in such receipts being assigned to Class II milk.

(2) The quantity assigned to Class II milk under this paragraph shall not exceed the quantity of Class II milk remaining at all of the handler's pool plants. Any remaining receipts shall be assigned to Class I milk.

(c) If the quantity to be assigned to a class under paragraph (b) of this section exceeds the quantity remaining in that class at the pool distributing plant, the remaining quantity shall be increased to the quantity to be assigned to that class and the remaining quantity in that class at the handler's other pool plants shall be decreased to the same extent, in sequence beginning with the plant in the lowest numbered zone. The quantity remaining in the other class thereupon shall be decreased correspondingly at the pool distributing plant and shall be increased correspondingly at the other pool plants involved in the adjustment.

(d) The quantities assigned under this section shall be limited to the excess of the receipts from a plant over the quantities of bulk fluid milk products moved to that plant from the pool distributing plant.

[41 FR 8357, Feb. 26, 1976, as amended at 43 FR 49971, Oct. 26, 1978]

§ 1001.47 Additional assignments to Class I and Class II milk.

(a) Assign to Class I milk bulk fluid milk products received from other pool plants, unless Class II utilization was requested by the transferee and transferor handlers.

(b) Assign to Class I milk the receipts of producer milk that have not been previously assigned pursuant to § 1001.43(d) and receipts of milk from cooperative associations in their capacity as handlers under § 1001.9(d).

(c) Assign to Class I milk the bulk fluid milk products received from other pool plants that have not been previously assigned.

(d) At pool distributing plants, assign to Class I milk the receipts from plants located outside the New England States and beyond Zone 40 of pool milk other than producer milk, if the fluid milk products received are not classified and priced under any Federal order.

(e) At pool plants other than pool distributing plants, assign to Class I milk the receipts of bulk fluid milk products from each regulated plant or handler under another Federal order, if such receipts are classified and priced under the other order as Class I milk or the equivalent thereof or in accordance with their assignment under this order.

(f) Assign to Class II milk any receipts of fluid milk products not previously assigned.

[41 FR 8357, Feb. 26, 1976, as amended at 46 FR 58642, Dec. 3, 1981]

§ 1001.48 Market administrator's report concerning classification.

Whenever required for the purpose of assigning receipts from a regulated plant or handler under another Federal order under § 1001.46(b), the market administrator shall publicly announce his estimate of the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

CLASS PRICES

§ 1001.50 Class prices.

Subject to the provisions of § 1001.52, the class prices per hundredweight of milk for the month shall be as follows:

(a) *Class I price.* The Class I price at plants located in Zone 21 shall be the basic formula price for the second preceding month plus $2.28.

(b) *Class II price.* Subject to the adjustment set forth below for the applicable month, the Class II price shall be the basic formula price for the month.

Month	Amount
January	+$0.03
February	+.02
March	.05
April	.09
May	.12
June	.11
July	−.03
August	+.10
September	−.06
October	−.06
November	+.06
December	+.06

[41 FR 8357, Feb. 26, 1976, as amended at 43 FR 17460, Apr. 25, 1978; 43 FR 49971, Oct. 26, 1978; 46 FR 58642, Dec. 3, 1981]

§ 1001.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the mid-point of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1001.52 Plant location adjustments.

The Class I and blended prices computed under §§ 1001.50 and 1001.61 shall be subject to plant location adjustments based upon the zone locations of plants. The zone location of any plant and the location adjustments applicable to each zone location shall be determined as specified in this section.

(a) The following zones are defined for the purpose of determining location adjustments:

(1) Zone 1 shall include the State of Rhode Island and the Massachusetts counties of Barnstable, Bristol, Dukes, Norfolk, Plymouth and Suffolk, and between Boston and Massachusetts highway route number 128.

(2) Zone 2 shall include the Massachusetts counties of Middlesex (only that portion south of Massachusetts highway route number 2 not included in Zone 1) and Worcester (only the townships of Berlin, Blackstone, Bolton, Douglas, Hopedale, Mendon, Milford, Millville, Northborough, Northbridge, Southborough, Sutton, Upton, Uxbridge, Westborough and that portion of Harvard township south of Massachusetts highway route number 2).

(3) Zone 3 shall include:

(i) The Connecticut counties of Middlesex (except the townships of Cromwell, Durham, Haddam, Middlefield, Middletown, and Portland), New London, Tolland (except the townships of Ellington and Somers), and Windham.

(ii) The Massachusetts county of Worcester (only the townships of Auburn, Boylston, Charlton, Clinton, Dudley, Grafton, Holden, Lancaster, Leicester, Millbury, Oxford, Paxton, Shrewsbury, Southbridge, Sterling, Webster, West Boylston, and Worcester City).

(4) Zone 5 shall include:

(i) The Connecticut counties of Fairfield, Hartford, Litchfield, Middlesex (only the townships of Cromwell, Durham, Haddam, Middlefield, Middletown and Portland), New Haven, and Tolland (only the townships of Ellington and Somers).

(ii) The Massachusetts counties of Hampden (only the townships of Brimfield, Holland, Monson, Palmer and Wales), Hampshire (only the the township of Ware), and Worcester (only the townships of Brookfield, East Brookfield, Hardwick, New Braintree, North Brookfield, Oakham, Spencer, Sturbridge and West Brookfield).

(5) Zone 6 shall include the Massachusetts counties of Hampden (except the townships of Brimfield, Holland, Monson, Palmer and Wales), and Hampshire (except the township of Ware).

(b)-(d) [Reserved]

(e) The zone location of each plant that is outside the areas specified in paragraphs (a) through (d) of this section shall be based upon its highway mileage distance to Boston, Mass., as determined by use of Mileage Guide No. 11, and supplements to and revisions thereof, issued by Household Goods Carriers' Bureau, Agent, Arlington, Va. The mileages used shall be those shown between designated key points in the mileage charts, and between named points on the appropriate State road maps, as published in the mileage guide. In any instance in which the map does not clearly show the mileage between points on a road, the mileage used shall be the mileage as determined by the highway authority for the State in which the road is located. The distance for each plant shall be the mileage between Boston and the named point nearest to the plant, as shown in the mileage charts. If that named point is not listed in the mileage charts, the distance for the plant shall be the lowest mileage distance between Boston and that named point, computed as follows:

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(1) Determine from the charts the mileage between Boston and each of the three key points nearest to the named point which are nearer to Boston than the named point; and

(2) For each of these key points, add to the result in paragraph (e)(1) of this section the mileage between the key point and the named point, measured to the greatest extent possible over roads designated as principal roads.

(f) Notwithstanding the provisions of paragraph (e) of this section, for any named point located in Maine, New Hampshire, Vermont, New York, or Berkshire County, Mass., determine the highway mileage distance between Boston and the named point by use of the appropriate State maps contained in Mileage Guide No. 7, issued by Household Goods Carriers' Bureau, Agent, Arlington, Va. Such distance shall be the lowest highway mileage between Boston and the named point on the map, over roads designated thereon as paved, all-weather roads. In the event that the named point is not located on a through, paved, all-weather road, such other roads shall be used to reach a through, paved, all-weather road as will result in the lowest highway mileage to Boston, except that such other roads shall not be used for a distance of more than 15 miles if it is otherwise possible to connect with a through, paved, all-weather road. In any instance in which the map does not clearly show the mileage between points on a road, the mileage used shall be the mileage as determined by the highway authority for the State in which the road is located. The mileage so determined, or the mileage determined under paragraph (e) of this section, whichever is less, shall be considered to be the lowest highway mileage distance between Boston and the named point.

(g) The location adjustments for each plant shall be the amounts shown in the following table for the zone in which the plant is located:

LOCATION ADJUSTMENTS FOR DETERMINATION OF ZONE PRICE

Distance to Boston (miles)	Plant location zone	Class I and blended price adjustments (cents per hundredweight)
1 to 10	1	+72.0
11 to 20	2	+69.5
21 to 30	3	+67.0
31 to 40	4	+64.5
41 to 50	5	+62.0
51 to 60	6	+59.5
61 to 70	7	+57.0
71 to 80	8	+54.5
81 to 90	9	+52.0
91 to 100	10	+49.5
101 to 110	11	+47.0
111 to 120	12	+44.5
121 to 130	13	+42.0
131 to 140	14	+39.5
141 to 150	15	+15.0
151 to 160	16	+12.5
161 to 170	17	+10.0
171 to 180	18	+7.5
181 to 190	19	+5.0
191 to 200	20	+2.5
201 to 210	21	+0.0
211 to 220	22	−2.5
221 to 230	23	−5.0
231 to 240	24	−7.5
241 to 250	25	−10.0
251 and over	[2] 26	([1])

[1] Class I and blended price location adjustments applicable to plants located in subsequent zones shall be obtained by extending the table at the rate of 2.5 cents for each additional 10 miles except that in no event shall the Class I or blended price at any zone be less than the Class II price for the month.

[2] Includes 26 and over.

[43 FR 49972, Oct. 26, 1978, as amended at 46 FR 58642, Dec. 3, 1981]

§ 1001.53 Determination of applicable zone locations for pricing purposes.

In computing the value of fluid milk products at class prices under § 1001.60, the handlers' producer-settlement fund debits and credits under § 1001.71, the minimum amounts payable to producers under § 1001.73, and the minimum amounts payable to cooperative associations under § 1001.74, the location adjustments specified in § 1001.52 for the zone location of the plant for which the computation is being made shall be used except that for the following items the adjustments for the zone locations specified shall be used:

(a) For producer milk diverted by any handler, including a cooperative association in its capacity as a handler under § 1001.9(d), the zone location of the plant to which the milk was diverted;

(b) For producer milk of a cooperative association in its capacity as a handler under § 1001.9(d) moved to a pool plant, the zone location of the plant to which the milk was moved;

(c) For milk of a cooperative association in its capacity as a handler under § 1001.9(d) in shrinkage, overage, extraordinary loss, and ending inventory, the zone location of the pool plant, or pool plants within the same zone, to which the greatest aggregate quantity of such milk of the cooperative association was moved during the current month or the most recent month;

(d) For beginning inventory of a cooperative association in its capacity as a handler under § 1001.9(d), the zone location at which the milk was priced as ending inventory during the previous month;

(e) For receipts of pool milk other than producer milk from plants, the zone location of the plant from which it was received;

(f) For receipts assigned to Class I milk under §§ 1001.45(e) and (f) and 1001.47(f), the zone location of the plant from which the product was received;

(g) For any excess of beginning inventory assigned to Class I milk under § 1001.45(d) over the quantities of producer milk and of milk from cooperative associations in their capacity as handlers under § 1001.9(d) assigned to Class II milk in the preceding month, the zone location of the pool plants from which an equivalent quantity of receipts of fluid milk products were assigned to Class II milk in the preceding month in sequence beginning with the plant in the lowest numbered zone; and

(h) For purposes of computing the value of fluid milk products at class prices, any fluid milk products moved in bulk from a pool plant to another pool plant at which a higher Class I price applies and which is classified as Class I milk shall be priced at the Class I price applicable at the location of the plant to which the milk was moved subject to a location adjustment credit for the transferee-plant determined by the market administrator as follows:

(1) After the assignments pursuant to § 1001.46 for the transferee-plant, multiply the remaining pounds of Class I skim milk by 110 percent and the remaining pounds of Class I butterfat by 150 percent;

(2) Subtract the respective pounds of skim milk and butterfat in bulk fluid milk products physically received at the plant from the following sources:

(i) Producers;

(ii) Cooperative associations in their capacity as handlers under § 1001.9(d);

(iii) Receipts of diverted milk from pool plants; and

(iv) Receipts (other than diverted milk) from pool plants at which the same or a higher Class I price applies;

(3) Assign any pounds remaining (which are not in excess of Class I transfers) to skim milk and butterfat in bulk receipts of fluid milk products (except diverted milk) from other pool plants at which a lower Class I price applies in sequence according to the zone location of the plants, beginning with the plant in the lowest numbered zone; and

(4) Multiply the hundredweight computed for each transferor-plant in paragraph (h)(3) of this section by the difference in the Class I prices applicable at the transferee-plant and transferor-plant and total such amounts.

[41 FR 8357, Feb. 26, 1976, as amended at 43 FR 49972, Oct. 26, 1978; 46 FR 58643, Dec. 3, 1981]

§ 1001.54 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II price for the preceding month.

§ 1001.55 Equivalent price.

If, for any reason, a price specified in this part for use in computing class prices or for other purposes is not reported or published in the manner described in this part, the market administrator shall use one determined by the Secretary to be equivalent to the price that is specified.

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BLENDED PRICE

§ 1001.60 Computation of value of fluid milk products at class prices.

For each month, the market administrator shall compute, as specified in this section, the value of fluid milk products at class prices, at each plant other than the plant of a producer-handler under any Federal order, and of the fluid milk products of each cooperative association in its capacity as a handler under § 1001.9(d) which were not moved to a pool plant. The prices used shall be those for the applicable zone locations as determined under § 1001.53.

(a) Multiply by the applicable class prices the quantities of:

(1) Producer milk assigned under §§ 1001.43(d) and 1001.47(b) except that for any cooperative association in its capacity as a handler under § 1001.9(d) the quantity of producer milk shall be reduced by the total quantity of milk moved to pool plants during the month, to the limit of the quantity of producer milk;

(2) Pool milk other than producer milk assigned under §§ 1001.45(g) and (h) and 1001.47(d); and

(3) Milk received at a pool plant from a cooperative association in its capacity as a handler under § 1001.9(d) and assigned under § 1001.47(b).

(b) Multiply by the applicable Class I prices the quantities of:

(1) Product assigned to Class I milk under §§ 1001.44(d) and 1001.45(a) through (c);

(2) Product assigned to Class I milk under § 1001.45(d), except that for any cooperative association in its capacity as a handler under § 1001.9(d) the quantity shall be reduced by the quantity of any excess of milk moved to pool plants during the month over the quantity of producer milk, to the limit of the quantity assigned to Class I milk under § 1001.45(d);

(3) Product assigned to Class I milk under §§ 1001.45(e) and (f) and 1001.47(f); and

(4) Filled milk not proved to have been made from other fresh fluid milk products assigned to Class I milk under § 1001.45(g) and (h).

(c) If the total quantity of skim milk or butterfat classified as Class I milk or Class II milk under §§ 1001.40 through 1001.42 exceeds the total quantity of skim milk or butterfat, respectively, assigned to that class under §§ 1001.43 through 1001.47, multiply the excess (overage) by the applicable class price, adjusted by the butterfat differential.

(d) Multiply by the applicable Class I price the quantities of:

(1) Pool milk distributed as route disposition in the marketing area from the handler's nonpool plant; and

(2) Filled milk distributed as route disposition in the marketing area from the handler's nonpool plant which is excluded from pool milk only because it is not proved to have been made from other fresh fluid milk products.

(e) Multiply by the Class II price the quantities of:

(1) Product assigned to Class I milk under § 1001.45(a) through (c);

(2) Product assigned to Class I milk under §§ 1001.45(e) and (f) and 1001.47(f); and

(3) Product for which a value is determined under paragraphs (b)(4) and (d)(2) of this section.

(f) Multiply by the applicable Class I price for the preceding month the product assigned to Class I milk under § 1001.44(d).

(g) Multiply by the applicable Class II price for the preceding month the quantity of product for which a value is determined under paragraph (b)(2) of this section.

(h) For any cooperative association in its capacity as a handler under § 1001.9(d), multiply by the applicable Class II price for the preceding month the quantity of any excess of milk moved to pool plants during the month over the quantity of producer milk, to the limit of the quantity of milk in its inventory at the beginning of the month.

(i) Add together the amounts obtained under paragraphs (a) through (d) of this section, subtract therefrom the sum of the amounts obtained under paragraphs (e) through (h) of this section, and subtract the amount of the location adjustment credit computed pursuant to § 1001.53(h).

[41 FR 8357, Feb. 26, 1976, as amended at 43 FR 17461, Apr. 25, 1978; 46 FR 58643, Dec. 3, 1981]

§ 1001.61 Computation of basic blended price.

The basic blended price per hundred-weight of pool milk containing 3.5 percent butterfat, applicable to plants located in zone 21, shall be computed for each month as specified in this section.

(a) Combine into one total the respective values of fluid milk products at class prices computed under § 1001.60 for each handler from whom the market administrator has received at his office prior to the 11th day after the end of the month the reports for the month prescribed in § 1001.30 and the payment for the preceding month required under § 1001.72(a).

(b) Deduct the amount of the plus adjustments, and add the amount of the minus adjustments, that are applicable under §§ 1001.52 and 1001.53.

(c) Subtract for each of the months of March, April, May, and June an amount computed by multiplying the total hundredweight of pool milk included in these computations by 20 cents in March, 30 cents in April, and 40 cents in May and June.

(d) Add for the months of August, September, and October an amount representing 25 percent, 30 percent, and 30 percent, respectively, of the aggregate amount subtracted under paragraph (c) of this section for the prior period of March-June, and for November add the remainder of the amount subtracted under such paragraph (c) and the interest earned on the aggregate fund.

(e) Add an amount equal to not less than one-half of the unobligated balance of the producer-settlement fund as at the close of business on the 10th day after the end of the month.

(f) Divide the resulting amount by the total hundredweight of pool milk for which a value is included under paragraph (a) of this section.

(g) Subtract not less than 4 cents nor more than 5 cents for the purpose of retaining a cash balance in the producer-settlement fund.

§ 1001.62 Announcement of blended prices and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The 5th day after the end of each month the butterfat differential for such month; and

(b) The 13th day after the end of each month the zone blended prices resulting from the adjustment of the basic blended price for such month, as computed under § 1001.61, by the location adjustments set forth in § 1001.52.

PAYMENTS FOR MILK

§ 1001.70 Producer-settlement fund.

(a) The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund." He shall deposit into the fund all amounts received from handlers under §§ 1001.72, 1001.77, and 1001.78 and the amount subtracted under § 1001.61(c). He shall pay from the fund all amounts due handlers under §§ 1001.72, 1001.77, and 1001.78 and the amount added under § 1001.61(d), subject to his right to offset any amounts due from the handler under these sections and under §§ 1001.85 and 1001.86.

(b) All amounts subtracted under § 1001.61(c), including interest earned thereon, shall remain in the producer-settlement fund as an obligated balance until it is withdrawn for the purpose of effectuating § 1001.61(d).

(c) The market administrator shall place all monies subtracted under § 1001.61(c) in an interest-bearing bank account or accounts in a bank or banks duly approved as a Federal depository for such monies, or invest them in short-term U.S. Government securities.

§ 1001.71 Handlers' producer-settlement fund debits and credits.

On or before the 15th day after the end of the month, the market administrator shall render a statement to each handler showing the amount of the handler's producer-settlement fund debit or credit, as calculated in this section.

(a) The producer-settlement fund debit or credit for each plant and each

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cooperative association in its capacity as a handler under § 1001.9(d) shall be computed as specified in this paragraph.

(1) Multiply the quantities of pool milk and the quantities of fluid milk products received at the pool plant from cooperative associations in their capacity as handlers under § 1001.9(d) by the basic blended price computed under § 1001.61 adjusted by any location adjustments applicable under §§ 1001.52 and 1001.53.

(2) For any cooperative association in its capacity as a handler under § 1001.9(d), multiply the quantities of milk moved to each pool plant by the basic blended price computed under § 1001.61 adjusted by any location adjustments applicable under §§ 1001.52 and 1001.53, and to the result add the value determined under § 1001.60.

(3) If the value of fluid milk products, as determined under § 1001.60 for any plant, or as determined under paragraph (a)(2) of this section for any cooperative association in its capacity as a handler under § 1001.9(d), is greater than the credit as determined under paragraph (a)(1) of this section, the difference shall be the producer-settlement fund debit for the plant or the cooperative association in its capacity as a handler under § 1001.9(d).

(4) If the value of fluid milk products, as determined under § 1001.60 for any plant, or as determined under paragraph (a)(2) of this section for any cooperative association in its capacity as a handler under § 1001.9(d), is less than the credit as determined under paragraph (a)(1) of this section, the difference shall be the producer-settlement fund credit for the plant or the cooperative association in its capacity as a handler under § 1001.9(d).

(b) The producer-settlement fund debit or credit of any handler shall be the net of the producer-settlement fund debits and credits as computed for all of its operations under paragraph (a) of this section.

§ 1001.72 Payments to and from the producer-settlement fund.

(a) On or before the 18th day after the end of the month, each handler shall pay to the market administrator the handler's producer-settlement fund debit for the month as determined under § 1001.71.

(b) On or before the 20th day after the end of the month, the market administrator shall pay to each handler the handler's producer-settlement fund credit for the month as determined under § 1001.71. If the unobligated balance in the producer-settlement fund is insufficient to make such payments, the market administrator shall reduce uniformly such payments and shall complete them as soon as the funds are available.

§ 1001.73 Payments to producers.

(a) On or before the 5th day after the end of the month, each handler shall pay each producer for milk received from him during the first 15 days of the month at a rate that is not less than the Class II price for the preceding month.

(b) On or before the 20th day after the end of the month, each handler shall make final payment to each producer for the total value of milk received from him during the month at not less than the basic blended price per hundredweight computed under § 1001.61, adjusted by the location adjustment applicable under §§ 1001.52 and 1001.53 and the butterfat differential applicable under § 1001.76, minus the amount of the payment made to the producer under paragraph (a) of this section. If the handler has not received full payment from the market administrator under § 1001.72(b) by the date payments are due under this paragraph, he may reduce pro rata his payments to producers by an amount not to exceed such underpayment. Such payments shall be completed after receipt of the balance due from the market administrator by the next following date for making payments under this paragraph.

(c) If the handler's net payment to a producer is for an amount less than the total amount due the producer under this section, the burden shall rest upon the handler to prove to the market administrator that each deduction from the total amount due is properly authorized and properly chargeable to the producer.

(d) In making payment to producers under paragraph (b) of this section for milk diverted from a pool plant the handler may elect to pay such producers at the price applicable at the zone location of the plant from which the milk was diverted, if the resulting net payment to each producer is not less than that otherwise required under this section and the rate of payment and the deductions shown on the statement required to be furnished under § 1001.75 are those used in computing the payment.

[41 FR 8357, Feb. 26, 1976, as amended at 43 FR 17461, Apr. 25, 1978; 43 FR 49972, Oct. 26, 1978]

§ 1001.74 Payments to cooperative associations.

(a) Each cooperative association may file with a handler who is not a cooperative association a claim either for the payments that the handler is required to make to the association's producer members under § 1001.73 or for authorized deductions from such payments. The claim shall contain a list of the producers to whom the payments are due or to whom the deductions apply, an agreement to indemnify the handler in the making of such payments or deductions, and a certification that the association has for each producer listed an unterminated membership contract authorizing the payment or deduction.

(b) The handler shall withhold from the association's producer members the payments or the deductions specified in paragraph (a) of this section in accordance with the association's claim. He shall pay the amounts withheld to the association on or before the dates on which such amounts otherwise would have been due to the producer members under § 1001.73.

(c) For each producer member from whom payment was withheld, the handler shall furnish the association a supporting statement showing the information required to be furnished to the producer under § 1001.75. Such information with respect to milk received during the first 15 days of the month shall be furnished not later than the 27th day of the month and with respect to milk received during the remainder of the month not later than the 12th day of the following month. For each producer member from whom a deduction is made under this section, the handler shall furnish the association a statement showing the pounds of milk received.

(d) Each handler who receives fluid milk products at his plant from a cooperative association in its capacity as the operator of a pool plant or in its capacity as a handler under § 1001.9(d) shall make payment to the association for such receipts as follows:

(1) On or before the 5th day after the end of the month, for the fluid milk products received from the association during the first 15 days of the month at a rate that is not less than the Class II price for the preceding month. The payment made to the association under this subparagraph shall constitute partial payment of the total amount required to be paid under this paragraph.

(2) On or before the 20th day after the end of the month, for not less than the total value of fluid milk products received from the association's pool plants, as determined by multiplying the respective quantities assigned to each class under §§ 1001.44 and 1001.47 by the class price for the month, adjusted by the location adjustments applicable under §§ 1001.52 and 1001.53 and the butterfat differential applicable under § 1001.76, minus the amount of the payment made to the association under paragraph (d)(1) of this section.

(3) On or before the 20th day after the end of the month, for not less than the total value of milk received from the cooperative association in its capacity as a handler under § 1001.9(d), at the basic blended price per hundredweight for the month computed under § 1001.61, adjusted by the location adjustment applicable under §§ 1001.52 and 1001.53 and the butterfat differential applicable under § 1001.76, minus the amount of the payment made to the association under paragraph (d)(1) of this section. If the handler has not received full payment from the market administrator under § 1001.72(b) by the date payment is due under this paragraph, he may reduce his payment to the association by an amount not to exceed

such underpayment. Such payment shall be completed after receipt of the balance due from the market administrator by the next following date for making payment under this paragraph.

[41 FR 8357, Feb. 26, 1976, as amended at 43 FR 17461, Apr. 25, 1978]

§ 1001.75 Statements to producers.

In making the payments to producers required under § 1001.73, each handler shall furnish each producer with a supporting statement, in such form that it may be retained by the producer, which shall show:

(a) The month and the identity of the handler and of the producer;

(b) The pounds and butterfat test of milk that is received from the producer, or if more than one minimum rate of payment is applicable to the producer's milk under § 1001.73, the respective pounds and test to which each minimum rate of payment applies;

(c) The minimum rate or rates, including the butterfat differential, at which payment to the producer is required under § 1001.73.

(d) The rate that is used in making the payment, if such rate is other than the applicable minimum rate;

(e) The amount or the rate per hundredweight of each deduction claimed by the handler, including any deductions claimed under §§ 1001.74 and 1001.86, together with a description of the respective deductions; and

(f) The net amount of payment to the producer.

§ 1001.76 Butterfat differential.

(a) In making the payments to producers required under § 1001.73 and the payments to cooperative associations required under § 1001.74(d), each handler shall add for each one-tenth of one percent of average butterfat content above 3.5 percent, or may deduct for each one-tenth of one percent of average butterfat content below 3.5 percent, as a butterfat differential, an amount per hundredweight that shall be computed by the market administrator under paragraph (b) of this section.

(b) Multiply by 0.115 and round to the nearest one-tenth cent the simple average of the daily wholesale selling prices (using the midpoint of any price range as one price) per pound of Grade A (92-score) bulk creamery butter at Chicago, as reported by the Department for the month.

§ 1001.77 Adjustment of accounts.

(a) Whenever the market administrator's verification of a handler's reports or payments discloses an error in payments to or from the market administrator under § 1001.72, § 1001.85, or § 1001.86, the market administrator shall promptly issue to the handler a charge bill or a credit, as the case may be, for the amount of the error. Adjustment charge bills issued during the period beginning with the 11th day of the prior month and ending with the 10th day of the current month shall be payable by the handler to the market administrator on or before the 18th day of the current month. Adjustment credits issued during that period shall be payable by the market administrator to the handler on or before the 20th day of the current month.

(b) Whenever the market administrator's verification of a handler's payments discloses payment to a producer or a cooperative association of an amount less than is required by §§ 1001.73 and 1001.74, the handler shall make payment of the balance due the producer or the cooperative association not later than the 20th day after the end of the month in which the handler is notified of the deficiency.

§ 1001.78 Charges on overdue accounts.

Any producer-settlement fund account balance due from or to a handler under § 1001.72, § 1001.77, or § 1001.78, for which remittance has not been received in or paid from the market administrator's office by the close of business on the 20th day of any month, shall be increased one percent effective the following day. Any remittance received by the market administrator after the 20th day of any month in an envelope that is postmarked not later than the 18th day of the month shall be considered to have been received by the 20th day of that month.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1001.85 Assessment for order administration.

On or before the 18th day after the end of the month, each handler shall pay to the market administrator his pro rata share of the expense of administration of this order. The payment shall be at the rate of 4 cents per hundredweight, or such lesser rate as the Secretary may prescribe. The payment shall apply to:

(a) All of a handler's receipts at pool plants during the month of fluid milk products from all sources, except receipts from pool plants, receipts from regulated plants or pool bulk tank units under other Federal orders if such receipts were subject to an administrative expense assessment under the other order, and receipts of exempt milk processed at plants other than pool plants;

(b) All receipts and beginning inventory of a cooperative association in its capacity as a handler under § 1001.9(d) for the month less its disposition to pool plants and ending inventory for the month; and

(c) The quantity distributed as route disposition in the marketing area from a handler's nonpool plant for which a value is determined under § 1001.60(d).

§ 1001.86 Deduction for marketing services.

(a) In making the payments required by § 1001.73 to producers, other than himself and any producer who is a member of a cooperative association that the Secretary determines is performing the services specified in this section, each handler shall deduct 5 cents per hundredweight, or such lesser rate as the Secretary shall determine to be sufficient, for marketing services. The handler shall pay the amount deducted to the market administrator on or before the 18th day after the end of the month.

(b) The market administrator shall expend amounts received under paragraph (a) of this section only in providing for market information to such producers and for verification of weights, samples, and tests of milk received from them. The market administrator may contract with a cooperative association for the furnishing of the whole or any part of these services.

[41 FR 8357, Feb. 26, 1976, as amended at 43 FR 17461, Apr. 25, 1978]

PART 1002—MILK IN NEW YORK-NEW JERSEY MARKETING AREA

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Subpart—Order Regulating Handling

SOURCE: 33 FR 8201, June 1, 1968, unless otherwise noted.

GENERAL PROVISIONS AND DEFINITIONS

§ 1002.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

[36 FR 9847, May 29, 1971]

§ 1002.3 Marketing area.

"New York-New Jersey milk marketing area" (hereinafter called the "marketing area") means all of the territory within the boundaries of the city of New York, and the counties and parts of counties set forth below together with all piers, docks, and wharves connected therewith, and all craft moored thereat, and including territory within such boundaries which is occupied by Government (municipal, State, Federal, or international) reservations, installations, institutions, or other establishments.

NEW YORK COUNTIES

Albany.
Broome.
Cayuga (except the townships of Sterling, Victory, Conquest, and Montezuma).
Chemung.
Chenango.
Columbia.
Cortland.
Delaware.
Dutchess.
Essex (Schroon, Ticonderoga, Crown Point and Moriah townships only).
Fulton (except the township of Stratford).
Greene.
Herkimer (except the townships of Webb, Ohio, and Salisbury).
Madison.
Montgomery.
Nassau.
Oneida (except the townships of Ava, Boonville, Forestport, and Florence).
Onondaga.
Orange.
Oswego (except the townships of Redfield and Boylston).
Otsego.
Putnam.
Rensselaer.
Rockland.
Saratoga (except the townships of Day, Edinburg, and Providence).
Schenectady.
Schoharie.
Schuyler.
Steuben (Addison, Corning, and Erwin townships only).
Suffolk (except Fisher's Island).
Sullivan.
Tioga.
Tompkins.
Ulster.
Warren (except the townships of Johnsburg, Thurman, and Stony Creek).
Washington.
Westchester.

Yates (except the townships of Italy, Middlesex, and Potter)

NEW JERSEY COUNTIES

Bergen.
Essex.
Hudson.
Hunterdon.
Middlesex.
Monmouth.
Morris.
Ocean (except the boroughs of Barnegat Light, Beach Haven, Harvey, Cedars, Ship Bottom, Surf City, Tuckerton, and the townships of Eagleswood, Lacery, Little Egg Harbor, Long Beach, Ocean, Stafford, and Union)
Passaic.
Somerset.
Sussex.
Union.
Warren.

EFFECTIVE DATE NOTE: Section 1002.3 was revised at 50 FR 45596, Nov. 1, 1985, effective December 1, 1985. At 50 FR 49674, Dec. 4, 1985, the effective date was suspended until further notice. For the convenience of the user, the revised text appears below.

§ 1002.3 New York-New Jersey marketing area.

"New York-New Jersey marketing area" (hereinafter called the "marketing area") means all of the territory within the boundaries of the city of New York, and the counties and parts of counties set forth below together with all piers, docks, and wharves connected therewith, and all craft moored thereat, and including territory within such boundaries which is occupied by Government (municipal, State, Federal, or international) reservations, installations, institutions, or other establishments.

NEW YORK COUNTIES

Albany, Broome, Cayuga (except the townships of Sterling, Victory, Conquest, and Montezuma), Chemung, Chenango, Columbia, Cortland, Delaware, Dutchess, Essex (Schroon, Ticonderoga, Crown Point, and Moriah townships only), Fulton (except the township of Stratford), Greene, Herkimer (except the townships of Webb, Ohio, and Salisbury), Madison, Montgomery, Nassau, Oneida (except the townships of Ava, Boonville, Forestport, and Florence), Onondaga, Orange, Oswego (except the townships of Redfield and Boylston), Otsego, Putnam, Rensselaer, Rockland, Saratoga (except the townships of Day, Edinburg, and Providence), Schenectady, Schoharie, Schuyler, Steuben (Addison, Corning, and Erwin townships only), Suffolk (except Fisher's Island), Sullivan, Tioga, Tompkins, Ulster, Warren (except the townships of Johnsburg, Thurman, and Stony Creek), Washington, Westchester, Yates (except the townships of Italy, Middlesex, and Potter).

NEW JERSEY COUNTIES

Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean (except the boroughs of Barnegat Light, Beach Haven, Harvey Cedars, Ship Bottom, Surf City, Tuckerton, and the townships of Barnegat, Eagleswood, Lacey, Little Egg Harbor, Long Beach, Ocean, and Stafford), Passaic, Somerset, Sussex, Union, Warren.

PENNSYLVANIA COUNTIES

Bradford, Columbia, Lackawanna, Luzerne, Lycoming, Monroe, Montour, Northumberland, Pike, Snyder, Sullivan, Susquehanna, Union, Wayne, Wyoming.

§ 1002.5 Dairy farmer.

"Dairy farmer" means any person who produces milk.

§ 1002.6 Producer.

"Producer" means any dairy farmer who delivers pool milk as specified in § 1002.14 to a pool plant, a pool unit, a plant specified in § 1002.28(f)(2) which is a partial pool plant, or a partial pool unit whose pool designation was canceled for failure to meet the requirements specified in § 1002.26(a), except that it shall not include any such dairy farmer delivering to such partial pool plant or partial pool unit unless at least 50 percent of his milk delivered to such plant or unit is pool milk pursuant to § 1002.14. Each dairy farmer delivering milk to a partial pool plant or a partial pool unit shall be considered to have delivered pool milk for his proportionate share of total milk delivered by dairy farmers to such plant or unit.

§ 1002.7 Handler.

"Handler" means:

(a) Any person who engages in the handling of skim milk or butterfat which was received at a pool plant, a partial pool plant, a pool unit or a partial pool unit or at a plant approved by any health authority as a source of skim milk or butterfat for disposition as fluid milk products in the marketing area;

(b) Any person who engages in the handling of fluid milk products, all or a portion of which is shipped to, or received in, the marketing area; or

(c) Any cooperative association with respect to milk which it causes to be delivered from producers to any other handler for the account of such association and for which such association receives payment.

§ 1002.8 Plant.

(a) "Plant" means the land, buildings, surroundings, facilities, and equipment, whether owned or operated by one or more persons, constituting a single operating unit or establishment for the receiving, handling, or processing of milk or milk products as determined by the market administrator.

(b) "Pool plant" means any plant which is designated as a pool plant pursuant to §§ 1002.24 to 1002.28 and any plant, except an other order plant, which receives no milk from dairy farmers or units and from which 50 percent or more of the gross receipts of skim milk and butterfat in the form of fluid milk products is disposed of in consumer packages or dispenser inserts in the marketing area by direct distribution or is moved either in packaged form or bulk to other plants in the marketing area.

(c) "Partial pool plant" means a plant which is so designated pursuant to § 1002.29.

(d) "Other order plant" means a plant which is fully subject to the pricing and payment provisions of an other order.

§ 1002.9 Unit.

(a) "Pool unit" means a bulk tank unit established pursuant to § 1002.25 and which meets the requirements of a pool unit pursuant to such section.

(b) "Partial pool unit" means a bulk tank unit so designated pursuant to § 1002.25(k).

§ 1002.10 Farm.

"Farm" means the production facilities and resources supplying milk to a milk house of a dairy farmer. The location of the farm shall be deemed to be the same as the location of the milk house, and in the event of a change in the location of the dairy farmer's milk house, any question as to whether milk received from the new milk house is from the same or a different farm shall be determined by the market administrator.

§ 1002.11 Own farm milk.

(a) "Own farm milk" means milk received at a plant from a farm operated by the person who is the operator of such plant.

(b) The market administrator shall publicly announce the name of any handler operating a pool plant receiving own farm milk and the location of the plant operated by such handler. This public announcement shall not include the name of:

(1) Any person meeting the definition of producer-handler as set forth in § 1002.12;

(2) Any person receiving no milk from other dairy farmers and selling no more than 100 quarts per day of Class I-A milk to persons in the marketing area other than to other plants; or

(3) A charitable, religious, educational, or governmental institution which is not engaged in the practice of receiving bulk milk from other sources for processing or packaging and is not engaged in the practice of selling packaged milk to persons not associated with such institution.

§ 1002.12 Producer-handler.

"Producer-handler" means a handler who, following the filing of an application pursuant to paragraph (a) of this section, has been so designated by the market administrator upon determination that the requirements of paragraph (b) of this section have been met. Such designation shall be effective on the first of the month after receipt by the market administrator of an application containing complete information on the basis of which the market administrator determines that the requirements of paragraph (b) of this section are being met. The effective date of designation shall be governed by the date of filing new applications in instances where applications previously filed have been denied. All designations shall remain in effect until cancelled pursuant to paragraph (c) of this section.

(a) *Application.* Any handler claiming to meet the requirements of paragraph (b) of this section may file with the market administrator, on forms prescribed by the market administrator, an application for designation as a producer-handler. The application shall contain the following information:

(1) A listing and description of all resources and facilities used for the production of milk which are owned or directly or indirectly operated or controlled by the applicant.

(2) A listing and description of all resources and facilities used for the processing or distribution of milk or milk products which are owned, or directly or indirectly operated or controlled by the applicant.

(3) A description of any other resources and facilities used in the production, handling, or processing of milk or milk products in which the applicant in any way has an interest, including any contractual arrangement, and the names of any other persons having or exercising any degree of ownership, management, or control in, or with whom there exists any contractual arrangement with respect to, the applicant's operation either in his capacity as a handler or in his capacity as a dairy farmer.

(4) A listing and description of the resources and facilities used in the production, processing, and distribution of milk or milk products which the applicant desires to be determined as his milk production, processing, and distribution unit in connection with his designation as a producer-handler: *Provided,* That all milk production resources and facilities owned, operated, or controlled by the applicant either directly or indirectly shall be considered as constituting a part of the applicant's milk production unit in the absence of proof satisfactory to the market administrator that some portion of such facilities or resources do not constitute an actual or potential source of milk supply for the applicant's operation as a producer-handler.

(5) Such other information as may be required by the market administrator.

(b) *Requirements.* (1) The handler has and exercises (in his capacity as a handler) complete and exclusive control over the operation and management of a plant at which he handles milk received from production facilities and resources (milking herd, buildings housing such herd, and the land on which such buildings are located) the operation and management of which also are under the complete and exclusive control of the handler (in his capacity as a dairy farmer), all of which facilities and resources for the production, processing, and distribution of milk and milk products constitute an integrated operation over which the handler (in his capacity as a producer-handler) has and exercises complete and exclusive control.

(2) The handler, in his capacity as a handler, handles no fluid milk products other than those derived from the milk production facilities and resources designated as constituting the applicant's operation as a producer-handler.

(3) The handler is not, either directly or indirectly, associated with control or management of the operation of another plant or another handler, nor is another handler so associated with his operation.

(4) The handler sells more than an average of 100 quarts per day of Class I-A milk to persons in the marketing area other than to other plants.

(5) In case the plant of the applicant was operated by a handler whose designation as a producer-handler previously had been cancelled pursuant to paragraph (c) of this section, the quantity of fluid milk products handled during the 12 months preceding the application which was derived from sources other than the designated milk production facilities and resources constituting the applicant's operation as a producer-handler is less than the volume set forth for cancellation pursuant to paragraph (c) (3) or (4) of this section.

(c) *Cancellation.* The designation as a producer-handler shall be cancelled under conditions set forth in paragraphs (c) (1) and (2) of this section or, except as specified in paragraphs (c)(3) and (4) of this section, upon determination by the market administrator that any of the requirements of paragraph (b) of this section are not continuing to be met, such cancellation to be effective on the first day of the month following the month in which the requirements were not met.

(1) Milk from the designated production facilities and resources of the producer-handler is delivered in the name of another person as pool milk to another handler or except in the months of June through November with prior notice to the market administrator, a dairy herd, cattle barn, or milking parlor is transferred to another person who uses such facilities or resources for producing milk which is delivered as pool milk to another handler. This provision, however, shall not be deemed to preclude the occasional sale of individual cows from the herd.

(2) A dairy herd, cattle barn, or milking parlor, previously used for the production of milk delivered as pool milk to another handler, is added to the designated milk production facilities and resources of the producer-handler, except in the months of December through May, with prior notice to the market administrator, or if such facilities and resources were a part of the designated production facilities and resources during any of the preceding 12 months. This provision, however, shall not be deemed to preclude the occasional purchase of individual cows for the herd.

(3) If the producer-handler handles an average of more than 150 product pounds per day of fluid milk products which are derived from sources other than the designated milk production facilities and resources, the cancellation of designation shall be effective the first of the month in which he handled such fluid milk products.

(4) If the producer-handler handles fluid milk products derived from sources other than the designated milk production facilities and resources in a volume less than specified in paragraph (c)(3) of this section, the designation shall be cancelled effective on the first of the month following the third month in any six-month period in which the producer-handler handled such fluid milk products: *Provided*, That the receipt of up to an average of ten pounds per day of packaged fluid milk products in the form of fluid skim milk, or of any volume of other packaged fluid milk products (except milk) from pool plants, shall not be counted for purposes of this paragraph (c)(4).

(d) *Public announcement.* The market administrator shall publicly announce the name, plant, and farm location of persons designated as producer-handlers, and those whose designations have been canceled. Such announcements shall be controlling with respect to the accounting at plants of other handlers for fluid milk products received from such producer-handler on and after the first of the month following the date of such announcement.

(e) *Burden of establishing and maintaining producer-handler status.* The burden rests upon the handler who is designated as a producer-handler (and upon the applicant for such designation) to establish through records required pursuant to § 1000.5 that the requirements set forth in paragraph (b) of this section have been and are continuing to be met and that the conditions set forth in paragraph (c) of this section for cancellation of designation do not exist.

[33 FR 8201, June 1, 1968, as amended at 35 FR 16789, Oct. 30, 1970; 36 FR 9847, May 29, 1971]

§ 1002.13 Other order.

"Other order" means an order issued by the Secretary pursuant to the Act, which order regulates the handling of milk in a marketing area other than that defined in this part.

§ 1002.14 Pool milk.

"Pool milk" means all skim milk and butterfat contained in milk except as set forth in paragraphs (a) through (k) of this section which is pumped at the farm into a tank mounted on a truck or trailer for a handler who has included such milk in a pool unit, or a partial pool unit or which is delivered direct from a farm to a pool plant or a partial pool plant but is not put into a tank truck prior to such delivery. This

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definition shall include any milk so delivered by a person defined in § 1002.11(b)(2), by an institution defined in § 1002.11(b)(3), or by a producer-handler designated pursuant to § 1002.12 which milk is produced in accordance with methods and standards of the American Association of Medical Milk Commissions for the production of certified milk and which is delivered in bulk to another handler but for marketing as other than certified milk.

(a) Milk first received at a pool plant which otherwise would be considered producer milk under an other order if all of such milk is assigned to Class II pursuant to § 1002.45(a)(10) and the corresponding step of § 1002.45(b).

(b) [Reserved]

(c) Milk delivered by a pool unit direct to a plant other than a pool plant or a partial pool plant if such milk is pooled as producer milk under an other order.

(d) Milk which is pumped into a tank truck at the farm for delivery to a handler during any of the months of December through June if any milk from such farm was delivered to such handler as producer milk under an other order during any of the preceding months of July through November unless such farm becomes part of a partial pool unit.

(e) Milk delivered to a partial pool plant set forth in § 1002.29(a) and milk of a partial pool unit pursuant to § 1002.25(k)(1) in excess of the quantity of such milk classified as Class I-A and Class I-B.

(f) Milk delivered to a partial pool plant set forth in § 1002.29(b) and milk of a partial pool unit pursuant to § 1002.25(k)(2) in excess of the quantity of such milk classified as Class I-A in the marketing area or at a pool plant, except that if milk is shipped from a partial pool plant in the 401 miles and over freight zone to a plant from which 50 percent or more of the gross receipts of skim milk and butterfat in the form of fluid milk products is disposed of in consumer packages and dispenser inserts in the marketing area either by direct distribution or to other plants, all of the milk so shipped shall be considered to be pool milk except as set forth in paragraph (g) of this section.

(g) Milk delivered to a partial pool plant or a partial pool unit if in either case there is a monetary obligation on such milk under an other order.

(h) Milk received from farms in Nassau and Suffolk Counties in New York, which farms are not approved for sale of milk in New York City, and milk received from farms in New York City.

(i) Own farm milk of a handler listed pursuant to § 1002.11(b) not in excess of an average of 800 pounds per day if the handler is not a producer-handler designated pursuant to § 1002.12, and if the volume of skim milk and butterfat in milk handled, other than that derived from own farm milk, does not exceed an average of 1,600 pounds per day.

(j) Own farm milk of an institution as defined pursuant to § 1002.11(b)(3) if such milk is not delivered to a pool plant, a partial pool plant, a pool unit or a partial pool unit.

(k) All skim milk and butterfat handled by:

(1) A producer-handler designated pursuant to § 1002.12 which is derived from such producer-handler's production resources and facilities except as provided in the preamble of this section; or

(2) A producer-handler pursuant to an other order.

[33 FR 8201, June 1, 1968, as amended at 41 FR 8367, Feb. 26, 1976]

§ 1002.15 Fluid milk product.

"Fluid milk product" means all skim milk and butterfat in the form of milk, fluid skim milk, filled milk, cultured or flavored milk drinks (except eggnog and yogurt), concentrated fluid milk disposed of in consumer packages, and any mixture of cream, milk, or skim milk containing less than 10 percent butterfat (other than frozen desserts, frozen dessert mixes, whipped topping mixtures, evaporated milk, plain or sweetened condensed milk or skim milk, sterilized milk or milk products in hermetically sealed containers, and any product which contains 6 percent or more nonmilk fat (or oil)): *Provided*, That when any fluid milk product is fortified with nonfat milk solids, the amount of skim milk to be included within this definition shall be only that amount equal to the weight of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

[36 FR 19010, Sept. 25, 1971]

§ 1002.16 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts in the form of fluid milk products from any source other than receipts of pool milk from dairy farmers, receipts from other pool plants and pool units, and receipts of pool milk from partial pool plants and partial pool units;

(b) Receipts in a form other than as a fluid milk product (including those produced at the plant during a prior month) which are reprocessed, converted or combined with another product during the month; and

(c) Receipts in a form other than a fluid milk product for which the handler fails to establish a disposition.

§ 1002.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

[34 FR 18604, Nov. 22, 1969]

MARKET ADMINISTRATOR

§ 1002.22 Additional duties of the market administrator.

In addition to the duties specified in § 1000.3(c) of this chapter, the market administrator shall perform the following duties:

(a)-(h) [Reserved]

(i) Maintain a main office and such branch offices as may be necessary;

(j) Promptly notify a handler, upon receipt of the handler's written request therefor, of his determination as to whether one or more plants exist at a specified location, as to whether any specified item constitutes a part of the handler's plant, or as to which plant a specified item is a part in the event that the particular premises in question constitutes more than one plant: *Provided*, That if the request of the handler is for revision or affirmation of a previous determination, there is set forth in the request a statement of what the handler believes to be the changed conditions which made a new determination necessary. If a handler has been notified in writing of a determination with respect to an establishment operated by him, any revision of such determination shall not be effective prior to the date on which such handler is notified of the revised determination;

(k) [Reserved]

(l) Place the sums deducted under § 1002.71(c) and retained pursuant to § 1002.83 in an interest-bearing account or accounts in a bank or banks duly approved as a Federal depository for such sums, or invest them in short-term U.S. Government securities.

(m) Publicly announce the following:

(1) The fifth day of each month:

(i) The Class I price for the following month applicable at the 201-210-mile zone and at the 1-10-mile zone: *Provided*, That on the effective date hereof the market administrator shall publicly announce the Class I price for the remainder of the month of February 1975 at such zones and on or before the fifth day of March 1975 the market administrator shall publicly announce the Class I price for that month at such zones;

(ii) The Class II price for the preceding month applicable at the 201-210-mile zone and at the 1-10-mile zone;

(iii) The butterfat differential for the preceding month;

(iv) The average price per hundredweight for manufacturing grade milk, f.o.b. plants in Wisconsin and Minnesota, as reported by the U.S. Department of Agriculture for the preceding month;

(v) The simple average of the daily wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter per pound at Chicago, as reported by the U.S. Department of

Agriculture for the preceding month; and

(vi) The weighted average of carlot prices per pound for nonfat dry milk solids, spray process, for human consumption, f.o.b. manufacturing plants in the Chicago area, as published by the U.S. Department of Agriculture for the period from the 26th day of the second preceding month through the 25th day of the preceding month.

(2) The 15th day of each month, the uniform price for the preceding month pursuant to § 1002.71 applicable at the 201-210-mile zone and at the 1-10-mile zone pursuant to § 1002.82.

(3) For the purpose of allocating receipts from other Federal order plants under § 1002.45(a)(12) and the corresponding step of § 1002.45(b), his estimate of the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in pool milk of all handlers. Such estimate shall be final for such purpose.

[36 FR 19010, Sept. 25, 1971, as amended at 37 FR 2929, Feb. 10, 1972; 40 FR 6314, Feb. 11, 1975; 42 FR 52379, Sept. 30, 1977]

Pool Plants and Bulk Tank Units

§ 1002.24 Regular pool plants.

A plant may be designated a regular pool plant pursuant to either paragraph (a) or paragraph (b) of this section. Designation shall be applicable to the plant as such and subject to cancellation only pursuant to § 1002.27, regardless of change in the person owning or operating the plant. The market administrator shall be notified by the handlers involved of any transfer from one person to another of ownership or operation of a pool plant.

(a) Any plant shall be designated a pool plant upon determination by the Secretary that the provisions of paragraphs (a)(1) through (4) of this section have been met. Not later than the end of the month following the month in which an application is received by the Secretary pursuant to paragraph (a)(1) of this section, the Secretary shall either determine that the provisions of paragraphs (a)(1) through (4) of this section either have been met or have not been met, or notify the applicant that additional information is needed prior to making a determination. Such designation shall be effective the first of the month following the date of designation and shall continue until such designation is canceled pursuant to § 1002.27: *Provided*, That notwithstanding the provisions of paragraphs (a)(1) through (4) of this section, any plant which for the month immediately preceding the effective date of this section, had a designation pursuant to § 1002.24 as then in effect, is hereby designated a regular pool plant from the effective date of this section until such designation is canceled pursuant to § 1002.27.

(1) An application by the operator of the plant for such determination has been addressed to the Secretary and filed at the office of the market administrator: *Provided*, That if 50 percent or more of the dairy farmers delivering milk at such plant deliver such milk for the account of a cooperative association which does not operate the plant but for which milk such association receives payment, an application must be filed by such cooperative association as well as the person operating the plant.

(2) The plant is located in New York, New Jersey, or Pennsylvania.

(3) The plant was a pool plant pursuant to paragraph (a) or (b) of § 1002.28 for each of the 12 months immediately preceding the month during which an application is filed.

(4) The operating requirements of § 1002.26 are being met.

(b) A plant may be designated at any time as a regular pool plant upon application made by the person operating the plant to the Secretary showing that the plant is a replacement for one or more pool plants, designated pursuant to this section, which are operated by him and that substantially all of the dairy farmers delivering milk at the plant previously delivered milk to the pool plant or plants replaced.

§ 1002.25 Bulk tank units.

Any handler receiving milk from farms in a tank truck shall establish such farms in one or more bulk tank units (hereinafter called "units") each consisting of one or more farms, in accordance with provisions of this section. The milk of any farm included in a unit shall be considered for pricing purposes as having been received by the handler in the unit at the nearest point of the township (as determined pursuant to § 1002.51(b)) in which such farm is located. Any handler who receives milk at a pool plant or a plant distributing Class I-A milk in the marketing area which is delivered from a farm to such plant in a tank truck shall be deemed to have received such milk from a unit, pool, partial pool, or nonpool, and any handler who receives bulk milk from a farm in a tank truck containing pool milk shall be deemed to have received such milk from a farm of a unit either pool, partial pool, or nonpool.

(a) Handlers who may establish, maintain, and be responsible for pool units are as follows:

(1) A handler who operates a pool plant or a handler who operates a plant from which Class I-A milk is distributed in the marketing area other than to another plant: *Provided*, That a handler who is affiliated with or is a subsidiary of a handler operating a pool plant may also operate pool units if both handlers notify the market administrator in writing of such relationship: *Provided further*, That such handler who operates a distributing plant but not a pool plant, to be eligible to maintain a pool unit for any month, must have combined receipts of skim milk and butterfat from such unit for such month classified as Classes I-A and I-B in a percentage at least as great as the market percentage of pool milk in Classes I-A and I-B for the same month of the preceding year.

(2) A cooperative handler who does not operate a plant but who receives milk from farms in a tank truck and delivers such milk to plants of other handlers if such cooperative for 12 months has been qualified as a basis for payments pursuant to § 1002.89 or if such cooperative has operated a pool unit for 12 consecutive months: *Provided*, That such cooperative must meet the definition of a cooperative set forth in § 1002.89(a)(1).

(3) Any other cooperative handler who does not operate a plant if such cooperative meets the definition of a cooperative set forth in § 1002.89(a)(1) subject to the conditions of this section.

(4) For the months specified in paragraph (a)(4) (i) or (ii) of this section any other handler operating a unit in any of the months of April, May, or June which unit had for such month any skim milk or butterfat classified as Class I-A milk in the marketing area (on some basis other than failure to account for such milk) and had a total Class I-A and Class I-B classification in a percentage at least as great as the market percentage of pool milk in Classes I-A and I-B for the same month in the preceding year.

(i) Such month.

(ii) Each of the months through March following such month except for any month when the Class I-B or combined Class I-A and Class I-B of such unit is less than 60 percent.

(b) The handler may establish the units in any manner chosen by him, subject to the following limitations:

(1) Each unit shall have a headquarters where the basic record of receipts and butterfat tests of milk from each farm are maintained and where there is maintained the basic record of each receipt and each delivery of milk by each tank truck receiving milk from farms of the unit and related details with respect to the movement of such milk.

(2) Each unit shall be given a name indicating the general geographic area in which farms comprising such unit are located.

(3) The handler shall declare whether each unit is to be operated as a pool unit. Farms from which the milk is to be pooled shall be established in a separate unit from those which are not to be pooled.

(4) Farms in the area specified in paragraph (e) of this section shall be in units separate from farms in the area specified in paragraph (f) of this section.

(c) Except as set forth in paragraphs (c) (1) through (5) of this section, a handler may declare that a unit is to be operated as a pool unit and at any time may add a farm to a pool unit: *Provided*, That the milk of such unit or farm is delivered to a pool plant or a plant from which Class I-A milk is distributed in the marketing area on one day of the first month in which it is to be pooled and is under full approval for fluid use by the health authority or authorities approving such plant: *Provided further*, That a handler pursuant to paragraph (a)(4) of this section may not add farms to a pool unit during the months of July through March unless his Class I-A skim milk or butterfat utilization exceeds the total receipts of skim milk or butterfat, respectively, in milk from the pool unit, and in the latter case he may add only the smallest number of farms necessary to provide sufficient milk to cover such Class I-A utilization.

(1) If the unit is a declared nonpool unit or if the farm is a part of a declared nonpool unit of such handler, the unit or farm may be changed to a pool status only beginning the first day of a month upon notice to the market admininstrator by not later than the 10th day of such month. If the notice is filed after the 10th day of the month, the effective date shall be the first day of the following month except as specified in paragraph (c)(5) of this section.

(2) In the period of December through June, no new pool unit may be established, no nonpool or partial pool unit may be declared to be a pool unit, and no farm may be added to a pool unit if the handler caused, as specified in paragraph (d) of this section, any pool unit or any farm of a pool unit to become nonpool in the period of July through November immediately preceding: *Provided*, That this limitation shall not prevent the handler from including in a pool unit a farm which for the first time has converted from can delivery to bulk tank delivery and from which the handler received as pool milk all milk delivered by such farm in cans for a period of 30 days immediately preceding: *Provided further*, That, except in the case set forth in paragraph (d)(3) of this section, this paragraph (c)(2) shall not be applicable if the farm which is caused to become nonpool thereby becomes a producer farm under another order with a provision for marketwide equalization.

(3) No farm which was caused to become nonpool may be made a part of a pool unit by a handler set forth in paragraphs (c)(3) (i) through (iv) of this section until after the passage of a complete April-May-June period following the time such farm was caused to become nonpool:

(i) The handler who caused the farm to become nonpool.

(ii) The handler or other person who received the milk as nonpool milk.

(iii) A handler who is substantially under the same management control, or ownership as the handler or other person set forth in paragraph (c)(3) (i) or (ii) of this section.

(iv) A handler who receives the milk through arrangement with the handler or other person set forth in paragraph (c)(3) (i), (ii), or (c)(3)(iii) of this section.

(4) A handler may transfer a farm from one pool unit to another of his pool units on the first day of any month upon notice to the market administrator by not later than the 10th day of such month.

(5) A farm shall automatically be added to a pool unit or a nonpool unit shall automatically become a pool unit effective the first day of any month in which any of the skim milk or butterfat in milk of such farm or unit is assigned pursuant to § 1002.45 to Class I-A milk unless the handler is precluded from doing so pursuant to paragraph (c)(2) or (c)(3) of this section or unless such milk is considered producer milk under an other order with a provision for marketwide equalization. If some but not all skim milk or butterfat in milk received from such farms previously a part of a nonpool unit is assigned to Class I-A milk the handler operating such unit has until the time of filing the report required pursuant to § 1002.3 to specify which farms are to be added to a pool unit and if upon verification by audit the market admininstrator finds that other skim milk or butterfat in milk of a declared nonpool unit is assigned to Class I-A milk, the handler operating such unit has until ten days after notification by the market administrator to specify which farms are to be added to a pool unit. In absence of such spec-

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ification, all eligible farms shall be added to the pool unit.

(d) A handler may cause a pool unit or a farm which is a part of a pool unit to become nonpool by the methods set forth in paragraphs (d)(1) through (4) of this section: *Provided*, That the failure of a unit to meet the pool requirements set forth in paragraph (f) of this section shall not be considered for purposes of this paragraph to be a change of pool status caused by the handler: *Provided further*, That a handler pursuant to paragraph (a)(4) of this section must continue in a pool unit any farm which was a part of such handler's pool unit in any of the months of April, May, or June preceding from which he receives milk or from which any other handler receives milk through arrangement with him: *Provided further*, That if a unit operated by a handler is reported by another handler which is a cooperative, the actions specified in paragraphs (d)(1), (2), and (4) of this section must be concurred in by such cooperative handler.

(1) The handler may change the status of a declared pool unit to a declared nonpool unit effective the first day of any month upon notice to the market administrator by not later than the 10th day of such month. If the notice is filed after the 10th day of the month, the effective date shall be the first day of the following month.

(2) The handler may transfer a farm from a pool unit to a nonpool unit effective the first day of any month upon notice to the market administrator by not later than the 10th day of such month. If the notice is filed after the 10th day of the month, the effective date shall be the first day of the following month.

(3) The handler may so operate a unit located in the area specified in paragraph (e) of this section that its pool status is cancelled pursuant to § 1002.27.

(4) The handler may arrange for the milk of a farm in his pool unit to be delivered to another person as nonpool milk. Any delivery of milk by a farm in a handler's pool unit to another person as nonpool milk shall be considered to have been arranged by such handler unless such handler can establish that such other person is not substantially under the same management, control or ownership as such handler and that such handler was in no way a party to such nonpool delivery.

(e) A declared pool unit must be operated to meet the requirements set forth in § 1002.26 if the farms of such unit are located in the following area: New York, New Jersey, the counties of Addison, Rutland, and Bennington in Vermont, the county of Berkshire in Massachusetts, or in Pennsylvania. Failure to meet such requirements shall make such declared pool unit subject to suspension and cancellation pursuant to the procedure set forth in § 1002.27. This paragraph shall not be applicable to a cooperative handler specified in paragraph (a)(3) of this section.

(f) A declared pool unit made up of farms located outside the area specified in paragraph (e) of this section or a declared pool unit made up of farms specified in paragraph (e) of this section and operated by a cooperative handler specified in paragraph (a)(3) of this section shall be a pool unit in the months of July through March if at least 25 percent of the milk in such unit is delivered in such month to pool plants, and shall be a pool unit in the months of April through June only if 60 percent of the milk of such unit was received at pool plants during the period of October through December immediately preceding or if such handler received no milk of such unit or from farms of such unit in the preceding October through December.

(g) Any unit declared to be a pool unit shall be designated a pool unit in any month (1) if the handler is qualified in such month pursuant to paragraph (a) of this section, (2) if such unit meets all the requirements of this section applicable to it to be a pool unit, or (3) if the designation of such unit has not been cancelled pursuant to § 1002.27.

(h) Each handler shall report to the market administrator, not later than the 20th day of the month in which this paragraph becomes effective, the name and headquarters of each unit established by him, the identification of the farms included in each unit, and his declared status (pool or nonpool) of each unit. Thereafter, each handler shall report by not later than the 10th day of the month any changes in units during the preceding month and as of the first day of such month.

(i) Whenever the market administrator finds that a handler has received bulk tank milk from a farm required to be included in an established unit but which has not been so included, he shall tentatively assign such farm to a unit and promptly notify the handler of such action. Unless otherwise requested by the handler within 10 days of such notice, the tentative assignment by the market administrator will become final.

(j) Whenever the market administrator finds that a handler has caused milk to become nonpool pursuant to paragraph (d)(4) of this section he shall promptly notify the handler of such finding. Within 10 days of such notice the handler may, except as to any such milk pooled under another order, (1) make a written claim that the failure to include the milk involved as pool milk was an error and, in such event, the market administrator shall pool such milk and rescind his finding, or (2) make a written offer to submit proof that he had not caused such milk to become nonpool. In the latter event, the market administrator shall examine such proof and shall either rescind his original finding or confirm it. Failure to respond to the market administrator's notice shall be deemed to confirm the finding.

(k) Units other than those which are pool units pursuant to paragraph (g) of this section shall be designated partial pool units if they meet the provisions set forth in paragraphs (k) (1) and (2) of this section.

(1) Any nonpool unit which would have been automatically made a pool unit pursuant to paragraph (c)(5) of this section except that the handler is precluded from adding farms thereof to a pool unit pursuant to paragraph (c)(2) or (c)(3) of this section. If a unit of a handler becomes a partial pool unit pursuant to this paragraph, all of the handler's pool units and partial pool units shall be combined and the skim milk and butterfat in milk of the partial pool units assigned to Class II of such combined total prior to any skim milk and butterfat in the partial pool unit milk being assigned to Class I-A.

(2) Any unit the milk of which fails to meet the pooling requirements of paragraph (f) of this section or any unit operated by a handler not specified in paragraph (a) of this section, as being eligible to establish and maintain pool units, or any unit made up of farms located in the 401 miles and over freight zone unless the handlers operating such unit is eligible to establish a pool unit and has specifically requested such unit to be so designated.

(l) The market administrator shall publicly announce the names of handlers establishing pool units and the names and headquarters of such units. He shall also publicly announce any change in the pool status of such units, and the names of handlers who are ineligible to add farms to a pool unit under the terms set forth in paragraph (c)(3) of this section.

§ 1002.26 Operating requirements.

The person operating a pool plant designated pursuant to § 1002.24 or a declared pool unit consisting of farms in the area specified in § 1002.25(e) shall stipulate to each of the following requirements:

(a) Be willing to dispose of as Class I-A milk in the marketing area milk received at the plant or on the unit from dairy farmers and agree that if a plant designation is canceled for failure to meet this requirement, the Class I-A and Class I-B milk of such plant through the partial pool plant provision shall be priced and equalized from the effective date of cancellation through the following June 30.

(b) Keep such control over the sanitary conditions under which milk received at the plant or on the unit is produced and handled that the milk can meet the requirements of a source of milk for the marketing area: *Provided*, That approval by a health authority of the plant as a source of milk for the marketing area shall constitute sufficient evidence that this requirement is being met even though such approval is restricted to prohibit shipment to the marketing area of milk for

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specified periods during which permission is given by such health authority for receiving unapproved milk or skim milk at the plant or for shipment of approved skim milk from such plant; and

(c) Have no commitments for disposition of milk that prevent him from utilizing milk as set forth in § 1002.27(c).

§ 1002.27 Suspension and cancellation of designation.

The designation of a pool plant pursuant to § 1002.24 or of a declared pool unit consisting of farms in the area specified in § 1002.25(e) may be suspended or canceled under any of the following provisions:

(a) The designation shall be canceled effective on the first of the month following the filing with the market administrator, and on a form prescribed by him, of an application by the handler operating the plant: *Provided*, That a plant whose designation is so canceled on the first of any of the months of August through November shall be a pool plant if it meets the provisions of paragraph (a) of § 1002.28, and shall not be a pool plant pursuant to any other provision of this order prior to December 1 following such cancellation: *Provided further*, That such application for cancellation shall be accompanied by proof that the handler, if not a cooperative association qualified pursuant to § 1002.89 has notified any qualified cooperative association which has any members who deliver milk to such plant, and has notified individually all producers delivering to such plant who are not members of such qualified cooperative association, of his intention to make such application: *Provided further*, That if 50 percent or more of the producers delivering milk at such plant deliver such milk for the account of a cooperative association which does not operate the plant but for which milk such association receives payment, an application must be made by such cooperative association as well as by the handler operating the plant: *Provided further*, That if a handler applies for a replacement designation pursuant to § 1002.24(b) the designation of the plant or plants replaced shall be canceled automatically at the time the replacement designation becomes effective.

(b) The designation of any plant which on June 15 of any year is not approved by a health authority as a source of milk for the marketing area shall be automatically suspended effective on August 1 of such year unless the absence of such approval is a temporary condition covering a period of not more than 15 days: *Provided*, That the designation of a plant approved by a health authority as a source of milk for the marketing area, even though such approval is restricted to prohibit shipment to the marketing area of milk for specified periods during which permission is given by such health authority for receiving unapproved milk or skim milk at the plant or for shipment of approved skim milk from such plant, shall not be suspended pursuant to this provision.

(c) The designation of any plant or unit shall be suspended, effective no sooner than 10 days nor later than 20 days after the date of mailing of notice, by registered letter, to the handler, whenever the market administrator, subject to the limitations set forth in paragraphs (e) and (f) of this section, finds on the basis of available information that the handler operating the plant or unit is not meeting the requirements set forth in § 1002.26: *Provided*, That, if the handler operating the plant or unit is not a cooperative association qualified pursuant to § 1002.89, the market administrator shall notify any qualified cooperative association which has any members who deliver milk to such plant or unit, and shall also notify individually all producers delivering to such plant or unit who are not members of such qualified cooperative association, of such suspension of designation.

(d) In the case of suspension pursuant to this section of the designation of one or more plants or units for failure to meet the requirements of § 1002.26 (a) or (e) the handler operating such plant or unit may select, prior to the effective date of such suspension, one or more other pool plants or pool units consisting of farms in the area specified in § 1002.25(e) for suspension in lieu thereof if, during the preceding month, the quantity of pool milk received from producers at such substituted plants or units was not less than the quantity of pool milk received from producers at the plants or units named for suspension. The handler may also select the order in which plant or unit designations are to be canceled in the event of a later determination by the Secretary canceling the designation of some but not all of the plants or units suspended.

(e) Not later than 10 days after the effective date of suspension of designation pursuant to this section, the handler operating the plant or unit may apply to the Secretary for a review. If the handler fails to so apply for such review, the designation shall be canceled as of the effective date of the suspension. If the handler does so apply, the Secretary shall, after review, either determine that the requirements set forth in § 1002.26 have been met and order the suspension revoked, or determine that such requirements have not been met and order the designation canceled as of the effective date of the suspension: *Provided*, That, if the Secretary has made no determination within two months after the end of the month in which the suspension was made effective, but later orders the designation canceled, such cancellation shall be effective as of the first of the month following the date of such determination.

(f) Beginning with the effective date of a suspension pursuant to this section, and until the Secretary has either ordered the designation canceled or ordered the suspension revoked, the plant or unit shall be treated as a pool plant or pool unit: *Provided*, That all payments into or out of the producer settlement fund (except such payments on the basis of operations during a month in which the plant meets the requirements of § 1002.28 or the unit meets the requirements of § 1002.25(g)) shall be held in reserve by the market administrator until an order is issued by the Secretary, but not longer than 2 months after the end of the month in which the suspension was made effective.

(g) No pool plant or pool unit designation shall be suspended for failure to meet the requirements of § 1002.26(a) except under the following conditions:

(1) A meeting has been held no sooner than three days after notice by the market administrator to all handlers operating pool plants designated pursuant to § 1002.24 or pool units consisting of farms in the area specified in § 1002.25(e) for consideration of the desirable utilization of milk received from producers during a period ending not later than the end of the second month after the month during which such meeting is held.

(2) There has been issued by the market administrator, following such meeting, and mailed to all handlers operating pool plants designated pursuant to § 1002.24 or pool units consisting of farms in the area specified in § 1002.25(e) the market administrator's determination of the desirable utilization of milk received from producers each month during all or a part of the period set forth in paragraph (g)(1) of this section. Such determination shall include a schedule setting forth, by months, the desired minimum percentage of pool milk received from producers to be utilized in specified classes. Such specified classes shall include Class I-A in the marketing area, and may include all or a part of other Class I-A and Class I-B.

(3) The market administrator finds on the basis of available information that the handler operating a plant or unit or the cooperative reporting a plant or unit is not utilizing milk received from producers in accordance with the minimum percentage set forth in the determination of the market administrator previously announced pursuant to paragraph (g)(2) of this section: *Provided*, That the suspension of the designation of a plant or unit may be made effective during the months of November and December if the market administrator finds that the handler is utilizing any milk received from producers in classes other than those set forth in the determination of the market administrator announced pursuant to paragraph (g)(2) of this section.

(h) The cancellation of pool plant or pool unit designation for failure to meet the requirements of § 1002.26(a) shall be subject to the following conditions:

(1) No pool plant or pool unit designation shall be canceled if the handler operating the plant or unit utilized the milk received by him from producers during the month in which the suspension is made effective in accordance with the minimum percentage set forth in the determination of the market administrator announced pursuant to paragraph (g)(2) of this section.

(2) No pool plant or pool unit designation shall be canceled if the handler operating the plant or unit utilized in the specified classes set forth in the determination of the market administrator announced pursuant to paragraph (g)(2) of this section a percentage of the total milk received by him from producers during the month in which the suspension is made effective which is not less than the percentage of the total pool milk reported by all handlers for such month to have been used in the specified classes.

(3) In the event that all milk received from producers at a plant or unit is reported to the market administrator by a cooperative association qualified pursuant to § 1002.89 and such association pays the producer for such milk, the pool plant or pool unit designation shall not be canceled if a percentage of all milk reported by such cooperative association is utilized in accordance with the minimum percentage set forth in the determination of the market administrator announced pursuant to paragraph (g)(2) of this section, or in accordance with the percentage set forth in paragraph (h)(2) of this section.

(4) Cancellation of designations shall be limited to those plants or units necessary to result in a utilization of milk received at the remaining pool plants and pool units operated by the handler, or reported by the cooperative, as the case may be, in accordance with the minimum percentage set forth in the determination of the market administrator announced pursuant to paragraph (g)(2) of this section.

(i) Loss of approval by health authorities of a plant as a source of milk for the marketing area may in itself constitute adequate reason for the market administrator to suspend the designation of the plant for failure to meet the requirements of § 1002.26(b) only if the absence of such approval continues for more than 15 days.

(j) The designation shall be canceled effective on the first of the month following three consecutive months if in the absence of this designation milk received from dairy farmers and units at the plant would have been classified and priced under another order with a provision for marketwide equalization and if in each of such months the percentage of milk received from dairy farmers and units at the plant which is classified as Class I-A and disposed of in the marketing area defined in such other order is greater than the percentage of such milk so classified and disposed of in this marketing area.

§ 1002.28 Temporary pool plants.

Except for plants which, pursuant to paragraph (f) of this section, are not eligible for designation, any plant not designated pursuant to § 1002.24 shall automatically be designated a pool plant in accordance with provisions of paragraphs (a) through (e) of this section: *Provided*, That no plant shall be a pool plant pursuant to this section if, in the absence of this provision, milk received from dairy farmers and units at the plant would be classified and priced under another order with a provision for marketwide equalization, and if the percentage of the milk received from dairy farmers and units at the plant which is classified in Class I-A and disposed of in the marketing area defined in such other order is greater than the percentage of such milk so classified and disposed of in this marketing area: *Provided further*, That for purposes of the computations of percentages set forth in this section, skim milk and butterfat in filled milk shall be excluded from skim milk and butterfat classified in Class I-A and Class I-B.

(a) For any of the months of January through March and July through December, any plant at which 25 percent or more of the combined receipts of skim milk and butterfat in milk from dairy farmers and units is classified as Class I-A in the marketing area or as Class I-A on the basis of a transfer to a pool plant on some basis other than the failure to account for such milk shall automatically be designated a pool plant for such month: *Provided*, That at the option of the handler the plant shall not be a pool plant if less than 25 percent of such combined receipts of skim milk and butterfat in milk from other than pool units is classified in such Class I-A.

(b) For any of the months of April, May, or June, any plant at which during the preceding period of October, November, and December either (1) no milk was received from dairy farmers or units, or (2) 60 percent or more of the combined receipts of skim milk and butterfat in milk received from dairy farmers and units was classified in Class I-A in the marketing area or as Class I-A on the basis of a transfer to a pool plant, on some basis other than the failure to account for such milk, shall automatically be designated a pool plant for any of such months of April, May, or June in which 10 percent or more of the combined receipts of skim milk and butterfat in milk received from dairy farmers and units is classified in Class I-A in the marketing area or as Class I-A on the basis of a transfer to a pool plant, on some basis other than the failure to account for such milk: *Provided*, That at the option of the handler the plant shall not be a pool plant if less than 10 percent of combined receipts of skim milk and butterfat in such milk from other than pool units as classified in such Class I-A.

(c) Any plant which is a pool plant in any of the months of April, May, or June on the basis of paragraph (b) of this section or on the basis of paragraph (d) of this section and in the latter case, the percentage of combined receipts of skim milk and butterfat in milk from dairy farmers and units classified in Class I-A in the marketing area or as Class I-A on the basis of a transfer to a pool plant, is at least as great as the market percentage of pool milk in Classes I-A and I-B for the same month of the previous year, shall be a pool plant in any of the months of July through March following in which 60 percent or more of the combined receipts of skim milk and butterfat in milk received at the plant from dairy farmers and units is classified in Class I-A, Class I-B, or Classes I-A and I-B combined.

(d) Any plant which for any month is not a pool plant because of failure to meet the requirements of paragraph (a), (b), or (c) of this section shall be a pool plant in any month in which a daily average of at least 800 pounds of combined receipts of skim milk and butterfat in milk received from dairy farmers and units is classified as Class I-A in the marketing area or as Class I-A on the basis of a transfer to a pool plant, on some basis other than failure to account for such milk and if the percentage of combined receipts of skim milk and butterfat in milk classified as Class I-A and Class I-B is at least as great as the market percentage of pool milk in Classes I-A and I-B for the same month in the preceding year: *Provided*, That at the option of the handler, the plant shall not be a pool plant if none of the skim milk or butterfat in such milk from other than pool units is classified in such Class I-A: *Provided further*, That such plant shall not be a pool plant on the basis of this paragraph if it is located in the 401 miles and over freight zone.

(e) A plant whose regular pool plant designation has been canceled at the request of the handler on the first of any of the months of August through November shall be a pool plant in any month through November 30 following such cancellation if the percentage of the combined receipts of skim milk and butterfat in milk received from dairy farmers and units classified in Class I-A, Class I-B or Classes I-A and I-B combined is at least as great as the market percentage of pool milk in Classes I-A and I-B for the same month in the preceding year unless such plant qualifies as a pool plant under an other order with a provision for marketwide equalization.

(f) A plant shall not be a pool plant on the basis of this section for the periods and under the conditions set forth in paragraphs (f)(1) and (2) of this section:

(1) If the pool plant designation was canceled on the first of August, September, October, or November pursu-

ant to § 1002.27(a), for the period through November 30 except as specified in paragraph (e) of this section.

(2) If the pool plant designation was canceled pursuant § 1002.27 for failure to meet the requirements of § 1002.26(a), for the period from the date the cancellation was effective through the following June 30.

(g) At the time of announcing the uniform price for each month, the market administrator shall make public the location and name of the operator of any plant for which a report of receipts from dairy farmers was used in the computation of that uniform price.

[33 FR 8201, June 1, 1968, as amended at 34 FR 18604, Nov. 22, 1969; 41 FR 8367, Feb. 26, 1976]

§ 1002.29 Partial pool plants.

The following plants not designated pool plants pursuant to §§ 1002.24 and 1002.28, which plants distribute fluid milk products in the marketing area or transfer fluid milk products to a pool plant shall be designated partial pool plants:

(a) Plants set forth in § 1002.28(f).

(b) Plants other than those set forth in paragraph (a) of this section which have some skim milk or butterfat in milk received from dairy farmers or nonpool units classified in Class I-A on some basis other than failure to account for such milk, except a plant which would otherwise qualify as a pool plant pursuant to § 1002.28(d) but which has less than a daily average of 800 pounds of skim milk or butterfat in milk received from dairy farmers or units classified in Class I-A in the marketing area on some basis other than failure to account for such milk.

[33 FR 8201, June 1, 1968, as amended at 41 FR 8367, Feb. 26, 1976]

REPORTS

§ 1002.30 Reports of receipts and utilization.

Each handler, except a handler receiving own farm milk and not required to be listed pursuant either to § 1002.11 or § 1002.12, shall report each month to the market administrator for the preceding month in the manner and on the forms prescribed by the market administrator with respect to each of his pool plants or partial pool plants and each of his pool units or partial pool units, the information set forth in paragraphs (a) through (d) of this section. Such report, if transmitted by mail, shall bear a postmark no later than the eighth day of the month and if not so mailed, shall be delivered physically to the office of the market administrator no later than the close of business on the 10th day of the month.

(a) The quantity of skim milk and butterfat contained in:

(1) Receipts of milk from producers;

(2) Receipts of fluid milk products from other pool plants or partial pool plants and from pool units or partial pool units; and

(3) Receipts of other source milk.

(b) Inventories of fluid milk products on hand at the beginning and the end of the month;

(c) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including the destination of any fluid milk product, the classification of which wholly or partially depends upon its destination; and

(d) The computation pursuant to § 1002.70 of such handler's net pool obligation.

§ 1002.31 Producer payroll reports.

Each handler shall report with respect to producers as set forth in paragraphs (a) and (b) of this section:

(a) On or before the 10th day after the end of each month, the information required by the market administrator with respect to producer additions, producer withdrawals, and changes in names of farm operators; and

(b) On or before the last day of each month such handler's producer payroll for the preceding month, which shall show for each producer:

(1) The total pounds of milk from such producer;

(2) The average butterfat content of such milk: *Provided*, That if no butterfat tests are made on any of the milk received from producers, and if such milk is received by the handler from no more than 10 producers, 3.5 percent

shall be reported as the average butterfat test of milk received from producers;

(3) The amount of payment due each producer;

(4) The nature and amount of any deductions and charges made by the handler;

(5) The net amount of payment to such producer; and

(6) Such other information with respect thereto as the market administrator shall require.

§ 1002.32 Other reports.

At such time as the market administrator may request, each handler shall report to the market administrator in the manner and on forms prescribed by the market administrator:

(a) The quantities of skim milk and butterfat in milk and each milk product received at his nonpool plants, from dairy farmers, from other plants or nonpool units, from such handler's own farm, from other handlers, and from other sources;

(b) The quantities of skim milk and butterfat in milk and each milk product moved out of, or on hand at, his nonpool plants and the destination of such skim milk and butterfat;

(c) Information concerning land, buildings, surroundings, facilities and equipment at any of his plants;

(d) The current receipts and utilization of skim milk and butterfat at each of his pool plants and pool units; and

(e) Such other information as may be necessary for the administration of the provisions of this part.

CLASSIFICATION

§ 1002.40 Skim milk and butterfat to be classified.

All skim milk and butterfat required to be reported by each handler pursuant to §§ 1002.30 and 1002.32 shall be classified each month pursuant to the provisions of §§ 1002.41 through 1002.46. If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk used or disposed of in such product shall be considered to be an amount equivalent to the nonfat milk solids contained in such products plus all the water originally associated with such solids.

§ 1002.41 Classes of utilization.

Subject to the conditions set forth in §§ 1002.42 through 1002.46, the classes of utilization shall be as follows:

(a) Class I-A milk shall be all skim milk and butterfat:

(1) Disposed of as a fluid milk product:

(i) Inside the marketing area;

(ii) As route disposition in an other order marketing area;

(iii) To an other order plant and assigned under such other order to Class I;

(iv) In packaged form to an other order plant if such product is not defined as a fluid milk product under such other order, and

(v) To a partially regulated plant under an other order and there applied as an offset to Class I sales in any other order market;

(2) Contained in inventory of packaged fluid milk products on hand at the end of the month except as provided in paragraph (c)(3) of this section;

(3) In shrinkage assigned to Class I-A pursuant to paragraph (d) of this section; and

(4) Not specifically accounted for as Class I-B or Class II milk.

(b) Class I-B milk shall be all skim milk and butterfat:

(1) Disposed of as a fluid milk product outside the marketing area, except as provided in paragraphs (a)(1) (ii) through (v) and (c) (3), (4) and (5) of this section; and

(2) In shrinkage assigned to Class I-B pursuant to paragraph (d) of this section.

(c) Class II milk shall be all skim milk and butterfat:

(1) Disposed of in any product other than a fluid milk product;

(2) Disposed of as a fluid milk product in bulk to any establishment (other than a plant defined in § 1002.8) at which food products are processed and packed and at which establishment there is no disposition of fluid milk products other than those received in consumer packages for consumption on the premises;

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(3) Contained in inventory of fluid milk products in bulk which are on hand at the end of the month, and also with respect to any plant not defined in § 1002.8 (b) or (d) in inventory of fluid milk products in packaged form;

(4) Disposed of as a packaged fluid milk product to an other order plant and assigned under such other order as a fluid milk product to Class II;

(5) Disposed of in bulk as a fluid milk product to an other order plant and assigned to Class II under such other order;

(6) In skim milk represented by the nonfat solids added to a fluid milk product for fortification which is in excess of the volume included within the fluid milk product definition pursuant to § 1002.15;

(7) Contained in fluid milk products that are disposed of for animal feed;

(8) Contained in fluid milk products that are dumped, if the market administrator is notified in advance and is given the opportunity to verify such disposition;

(9) Contained in fluid milk products that are destroyed or lost by a handler in a vehicular accident, flood, fire, or in a similar occurrence beyond his control, to the extent that the quantities destroyed or lost can be verified from records satisfactory to the market administrator;

(10) In shrinkage of skim milk and butterfat, respectively, at a plant that is allocated pursuant to § 1002.42 to the receipts specified in § 1002.42(b)(1), but not to exceed the following:

(i) Two percent of the skim milk and butterfat, respectively, in pool milk received from producers;

(ii) Plus 2.0 percent of the skim milk and butterfat, respectively, in milk received from pool units;

(iii) Plus 2.0 percent of the skim milk and butterfat, respectively, in milk received from units other than pool units, exclusive of the quantity for which Class II utilization was requested by the handler;

(iv) Plus 1.5 percent of the skim milk and butterfat, respectively, in receipts of fluid milk products in bulk from other pool plants;

(v) Plus 1.5 percent of the skim milk and butterfat, respectively, in receipts of fluid milk products in bulk from an other order plant, exclusive of the quantity for which Class II utilization was requested by the operators of both plants;

(vi) Plus 1.5 percent of the skim milk and butterfat, respectively, in receipts of fluid milk products in bulk from plants other than those defined in § 1002.8 (b) or (d), exclusive of the quantity for which Class II utilization was requested by the handler; and

(vii) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraphs (c)(10) (i) through (vi) of this section;

(11) In shrinkage of skim milk and butterfat, respectively, at a plant that is allocated pursuant to § 1002.42 to the receipts specified in § 1002.42(b)(2).

(d) Shrinkage in excess of the amounts assigned to Class II pursuant to paragraphs (c) (10) and (11) of this section shall be assigned pro rata to Class I-A and Class I-B in accordance with the respective volumes of skim milk and butterfat actually accounted for in each such class.

[44 FR 5866, Jan. 30, 1979]

§ 1002.42 Shrinkage.

Shrinkage shall be allocated to a handler's receipts at each plant as follows:

(a) Compute the total shrinkage of skim milk and butterfat, respectively, at each plant.

(b) Shrinkage of skim milk and butterfat, respectively, shall be prorated between the respective quantities of skim milk and butterfat:

(1) In receipts described in § 1002.41(c)(10); and

(2) In other source milk not specified in § 1002.41(c)(10) which was received in bulk fluid form.

[44 FR 5867, Jan. 30, 1979]

§ 1002.44 Transfers.

Skim milk and butterfat transferred in the form of a fluid milk product from a pool unit or a pool plant to any other plant shall be classified pursuant to the provisions of paragraphs (a) through (e) of this section. The assignment procedure set forth in paragraph (e) shall also be applicable for the purpose of assignment of receipts at any plant which is not a plant defined pursuant to § 1002.8(b) or (d) and which receives no milk from dairy farmers or units but from which fluid milk products are disposed of in consumer packages or dispenser inserts in the marketing area either by direct distribution or to other plants:

(a) As Class I A milk if transferred to the plant of a handler listed pursuant to § 1002.12 or to a producer handler under an other order;

(b) In accordance with its assignment at the transferee plant pursuant to § 1002.45(a)(15) and the corresponding step of § 1002.45(b) if transferred from a pool unit, a pool plant as defined in § 1002.8(b) (except a pool plant pursuant to § 1002.28 other than a pool plant pursuant to the proviso of the preamble of § 1002.45), to a pool plant as defined in § 1002.8(b);

(c) In accordance with its assignment at the transferee plant pursuant to § 1002.45(a)(13) and (14) and the corresponding step of § 1002.45(b) if transferred from any plant for which pool status is conditioned on assignment pursuant to § 1002.45(a)(8), (13), and (14) and the corresponding step of § 1002.45(b) to a pool plant as defined in § 1002.8(b);

(d) As follows, if transferred to an other order plant:

(1) If transferred in packaged form classification shall be in the classes (either I-A or II) to which allocated as a fluid milk product under the other order: *Provided*, That if such product is not a fluid milk product under such other order classification shall be as Class I A;

(2) If transferred in bulk and the operators of both the transferor and transferee plants so request in their reports of receipts and utilization filed with their respective market administrators, classification shall be as Class II milk to the extent of the Class II utilization available for such assignment at the applicable step in the allocation provisions of the transferee order;

(3) Except as provided in paragraph (d)(2) of this section if transferred in bulk classification shall be in the classes (either Class I A or II) to which allocated under such other order.

(e) As Class I A if transferred in packaged or bulk to a plant which is not a plant as defined in § 1002.8(b) or (d), nor a producer-handler plant under an other order, unless the requirements of paragraphs (e)(1) and (2) of this section are met, in which case the skim milk and butterfat so transferred shall be classified in accordance with the assignment resulting from paragraph (e)(3) of this section: *Provided*, That if the classification of any skim milk and butterfat so transferred is dependent on the classification of bulk milk products moved from the transferee plant to a second nonpool plant, the same assignment procedure shall be followed with respect to receipts and utilization as such second nonpool plant.

(1) The transferring handler claims classification pursuant to the assignment set forth in paragraph (e)(3) of this section in his report submitted to the market administrator pursuant to § 1002.30 for the month within which such transaction occurred;

(2) The operator of such transferee plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for the purpose of verification;

(3) The skim milk and butterfat so transferred shall be classified on the basis of the following assignment of utilization at such transferee plant.

(i) Packaged receipts of fluid milk products from Federal order sources shall first be assigned to route disposition in Federal order marketing areas (assigning receipts to sales in the same market to the extent possible) and any residual shall be assigned to I-B route sales.

(ii) Such bulk transfers and other bulk receipts at such transferee plant from other order plants shall next be assigned to any remaining route disposition in any Federal order marketing area. For this purpose receipts from each Federal order market shall first be assigned to remaining route sales in such marketing area and any remainder of such receipts shall be prorated with all Federal order receipts to remaining route disposition in all Federal order marketing areas.

(iii) Receipts from dairy farmers shall than be assigned to any remaining route sales in the marketing area.

(iv) Remaining receipts from dairy farmers and other unregulated other source receipts (excluding opening inventory) in the form of fluid milk products shall be assigned pro rata to Class I-B and Class II utilization at such plant to the extent of such utilization available at such plant and any remainder of such receipts shall be assigned pro rata to Class I-A bulk sales to plants regulated under this order and Class I bulk sales to plants regulated under other orders.

(v) Any remaining receipts being assigned pursuant to this subparagraph shall be assigned pro rata with remaining receipts from other order plants, first to remaining Class I-A utilization, then Class I-B utilization and finally to Class II utilization at such plant: *Provided*, That if on inspection of the books and records of such plant the market administrator finds that there is insufficient utilization to cover such receipts, the remainder shall be classified as Class I-A.

(vi) Any remaining Class I-A route disposition in the marketing area shall be subject to the pricing specified in § 1002.70(d)(2).

[33 FR 8201, June 1, 1968, as amended at 34 FR 18604, Nov. 22, 1969]

§ 1002.45 Allocation of skim milk and butterfat classified.

The classification of milk received from producers at each pool plant or pool unit for each handler shall be determined each month pursuant to paragraphs (a), (b), and (c) of this section: *Provided*, That for the purpose of establishing the pool status of any plant with Class I-A route disposition in the marketing area which is not a pool plant pursuant to § 1002.24, skim milk and butterfat in milk received at such plant directly from dairy farmers or units up to an amount sufficient to qualify such plant as a pool plant pursuant to § 1002.28(a) or (b) shall be considered the source of such I-A route disposition of such plant and be subtracted from Class I-A prior to the application of the allocation sequence set forth in paragraphs (a) and (b) of this section, unless at the time of filing his report pursuant to § 1002.30 the handler elects not to have it so allocated.

(a) Skim milk shall be allocated in the following manner:

(1) Subtract the pounds of skim milk received in packaged form from a producer-handler for marketing as certified fluid milk products from the total pounds of skim milk in Class I-A and Class I-B milk, respectively, in accordance with its proportionate disposition to such classes;

(1-a) Subtract from the total pounds of skim milk in Class II the pounds of skim milk classified as Class II pursuant to § 1002.41(c)(10);

(2) Subtract from the remaining pounds of skim milk in Class I-A milk the pounds of skim milk in packaged fluid milk products received from other order plants;

(3) Subtract from the remaining pounds of skim milk in Class I-A milk the pounds of skim milk in inventory of packaged fluid milk products on hand at the beginning of the month: *Provided*, That for the first month of operation under this amended order such pounds of skim milk shall be subtracted from Class I-A, if classified as I-A, I-B, or Class II in the preceding month and from Class II if classified as Class III in the preceding month;

(4) Subtract from the pounds of skim milk remaining in each class in series beginning with Class II milk the pounds of skim milk in receipts of other source milk in a form other than that of a fluid milk product;

(5) Subtract in the order specified below from the pounds of skim milk remaining in Class I-A and Class II milk, in series beginning with Class II milk, the pounds of skim milk in:

(i) Receipts of fluid milk products from a producer-handler pursuant to an other order or a producer-handler defined pursuant to § 1002.12 (except pool milk designated in the preamble of § 1002.14).

(ii) Receipts of fluid milk products from a handler's plant at which milk is excepted from the pool milk definition pursuant to § 1002.14(h).

(iii) Receipts of fluid milk products from a handler with own farm milk which milk is excepted from the pool milk definition pursuant to § 1002.14(i).

(6) Subtract from the pounds of skim milk remaining in Class II milk the pounds of skim milk in receipts of other source milk in the form of fluid milk products from plants other than those defined in § 1002.8(b) or (d) and units other than pool units for which the handler requests a Class II classification, but not in any case to exceed the pounds of skim milk remaining in such class;

(7) Subtract from the remaining pounds of skim milk in Class I-A and Class II milk, in series beginning with Class II milk, the pounds of skim milk in inventory of fluid milk products in bulk on hand at the beginning of the month: *Provided*, That for the first month of operation under this amended order such pounds of skim milk shall be subtracted from Class I-A if classified as Class I-A, I-B, or II in the preceding month and from Class II if classified as Class III in the preceding month;

(7-a) Add to the remaining pounds of skim milk in class II the pounds subtracted pursuant to paragraph (a)(1-a) of this section;

(8) (i) Subtract pro rata from the pounds of skim milk remaining in Class I-B and Class II milk the remaining pounds of skim milk in receipts of other source milk in the form of fluid milk products from plants not defined pursuant to § 1002.8(b) or (d) and from units other than pool units: *Provided*, That if the pounds of skim milk to be assigned pursuant to this subparagraph exceed the available pounds of skim milk in Class I-B and Class II, the handler shall designate the priority of sources to be assigned to such classes.

(ii) No assignment shall be made pursuant to this subparagraph with respect to milk received from a plant not defined pursuant to § 1002.8(b) or (d) in the 401 miles and over freight zone at a plant from which 50 percent or more of the gross receipts of skim milk and butterfat leaves the plant in the form of fluid milk products in consumer packages or dispenser inserts and is classified as Class I-A;

(9) [Reserved]

(10) Subtract from the remaining pounds of skim milk in Class II milk the pounds of skim milk in bulk receipts of fluid milk products from other order plants not previously assigned and for which a Class II classification is requested by both the transferor and transferee handler in filing reports of receipts and utilization for the month with their respective market administrators, but not in any case to exceed the pounds of skim milk remaining in such class;

(11) Subtract pro rata from the remaining pounds of skim milk in each class the pounds of skim milk in receipts from dairy farmers and from the handler's own farm which are excepted from the pool milk definition pursuant to § 1002.14(h) and (i);

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products from other order plants not previously assigned pursuant to paragraphs (a) (2) and (10) of this section:

(i) Subject to the provisions of paragraphs (a)(12)(ii), (iii), and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in each class with respect to whichever of the following quantities represents the higher proportion of Class II milk:

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1002.22(m)(3), or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II milk exceeding the pounds of skim milk remaining in Class II milk at all such plants, the pounds of such excess shall be subtracted pro rata from the pounds of skim milk remaining in Class I-A milk and Class I-B milk after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II milk that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class II milk shall be increased (to the extent of available utilization in such class at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I-A milk and Class I-B combined shall be decreased by a like amount, pro rata to remaining utilization in each such class. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I-A milk or Class I-B milk that exceeds the pounds of skim milk remaining in that class, the pounds of skim milk in such class shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II milk shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made;

(13) If the plant at which assignment is being made is a plant from which 50 percent or more of the gross receipts of skim milk and butterfat in the form of fluid milk products left the plant in the form of fluid milk products in consumer packages or dispenser inserts and was classified as I-A, subtract pro rata from the remaining pounds of skim milk in each class the pounds of skim milk in receipts of fluid milk products from plants in the 401 miles or over freight zone, not defined pursuant to § 1002.8(b) or (d);

(14) Subtract from the remaining pounds of skim milk in Class I-A milk the pounds of skim milk in remaining receipts from plants (except other order plants) or units the pool status of which has not yet been established and which receipts have not previously been assigned pursuant to paragraphs (a) (8) and (13) of this section;

(15) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk received in the form of fluid milk products from other pool plants and from pool units (not previously assigned pursuant to the preamble of this section), in accordance with the classification assigned by the transferee handler subject to the conditions of paragraphs (a)(15) (i) through (iii) of this section:

(i) The skim milk so assigned to any class of utilization shall be limited to the amount thereof remaining in such class in the transferee plant;

(ii) If the transferor plant received during the month other source milk to be allocated pursuant to paragraph (a)(4) of this section the skim milk so transferred shall be classified so as to allocate the least possible Class I-A or I-B utilization to such other source milk; and

(iii) If the transferor handler received during the month other source milk to be allocated pursuant to paragraph (a)(8) of this section, the skim milk so transferred shall not be classified as Class I-A or I-B to a greater extent than would be applicable to a like quantity of such other source milk received at the transferee plant;

(16) Add to the remaining pounds of skim milk in Class I-A the pounds of skim milk received directly from dairy farmers which was deducted pursuant to the proviso in the preamble of this section;

(17) If the pounds of skim milk remaining in all classes exceeds the

pounds of skim milk in receipts from producers subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class II. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) Combine the amounts of skim milk and butterfat determined pursuant to paragraphs (a) and (b) of this section into one total for each class.

[33 FR 8201, June 1, 1968, as amended at 35 FR 16789, Oct. 30, 1970; 41 FR 8367, Feb. 26, 1976; 42 FR 52380, Sept. 30, 1977; 44 FR 5867, Jan. 30, 1979]

§ 1002.46 Rules and regulations.

Accounting rules and regulations to effectuate the provisions of §§ 1002.40 through 1002.45 shall be issued by the market administrator and shall include (but not be limited to) conversion factors to be used in the absence of specific weights and tests, specific definitions of products, specific shrinkage allowances and procedures for determining the quantities of skim milk and butterfat disposed of in specified products. Such rules and regulations shall be made, and may from time to time be amended, by the market administrator in accordance with the procedure set forth in this section: *Provided*, That at any time upon a determination by the Secretary that an emergency exists which requires the immediate adoption of rules and regulations, the market administrator may issue, with the approval of the Secretary, temporary rules and regulations without regard to the following procedure: *Provided further*, That, if any interested person makes written request for the issuance, amendment, or repeal of any rule, the market administrator shall within 30 days either issue notice of meeting pursuant to paragraph (a) of this section or deny such request and except in affirming a prior denial, or where the denial is self-explanatory, shall state the grounds for such denial: *Provided further*, That if the market administrator finds it necessary to promulgate formal rules with respect to units, he shall follow the procedure set forth in this section.

(a) All proposed rules and regulations and amendments thereto shall be the subject of a meeting called by the market administrator at which time all interested persons shall have opportunity to be heard. Notice of such meeting shall be given by the market administrator, and a copy of the proposed rules and regulations shall be sent at least 5 days prior to the date of the meeting to all handlers operating pool plants. A stenographic record shall be made at all such meetings and such record shall be public information available for inspection at the office of the market administrator.

(b) A period of at least 5 days after the meeting held pursuant to paragraph (a) of this section shall be allowed for the filing of briefs. Such briefs shall be public information available for inspection at the office of the market administrator.

(c) Not later than 30 days after a meeting held pursuant to paragraph (a) of this section, the market administrator shall issue and send to all handlers operating pool plants and pool units the tentative rules and regulations or amendments thereto relating to the issues considered at such meeting, or a tentative notice that no rules or regulations or amendments thereto are to be issued prior to further consideration at another meeting. The tentative rules and regulations, or tentative notice, together with copies of the stenographic record and briefs, shall also at the same time be forwarded by the market administrator to the Secretary.

(d) Not later than 30 days after issuance by the market administrator, the Secretary shall either approve the tentative rules and regulations or tentative notice as issued, or direct the market administrator to reconsider. In which latter event, the market administrator shall within 30 days either issue revised tentative rules and regulations or tentative notice, or call another meeting pursuant to paragraph (a) of this section.

(e) The tentative rules and regulations and amendments thereto or tentative notice issued pursuant to paragraph (c) of this section shall be effective as of the first of the month following approval by the Secretary, but not sooner than 10 days after issuance by the market administrator.

Minimum Prices

§ 1002.50 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

[37 FR 2929, Feb. 10, 1972]

§ 1002.50a Class prices.

For pool milk received during each month from dairy farmers or cooperative associations of producers, each handler shall pay per hundredweight not less than the prices set forth in this section, subject to the differentials and adjustments in §§ 1002.51 and 1002.81. Any handler who purchases or receives milk during any month from a cooperative association of producers but does not operate the plant or unit receiving this milk from producers shall pay the cooperative association on or before the 19th day of the following month for such milk at not less than the class prices pursuant to this section subject to the differentials and adjustments set forth in §§ 1002.51 and 1002.81 applicable at the plant at which the milk is first received from the cooperative association. Such payments to a cooperative association shall be deemed not to have been made until the payments have been received by the cooperative association.

(a) For Class I-A milk the price shall be the basic formula price for the second preceding month plus $2.25.

(b) For Class I-B milk the price shall be the price for Class I-A milk.

(c) Subject to the adjustment set forth below for the applicable month, the Class II price shall be the basic formula price for the month.

Month	Amount
January	+$0.03
February	+.02
March	.05
April	.09
May	.12
June	.11
July	+.03
August	+.10
September	+.06
October	+.06
November	+.06
December	+.06

[37 FR 2929, Feb. 10, 1972, as amended at 39 FR 11981, Apr. 2, 1974; 39 FR 30925, Aug. 27, 1974; 42 FR 11823, Mar. 1, 1977; 42 FR 52380, Sept. 30, 1977; 46 FR 41756, Aug. 18, 1981]

§ 1002.51 Transportation differentials.

The class prices set forth in § 1002.50a shall be subject to a transportation differential determined in accordance with paragraphs (a) through (e) of this section.

(a) The market administrator shall determine a freight zone for each pool plant and each partial pool plant. Such freight zone shall be the shortest highway mileage from the plant to the nearest of the following points as computed by the market administrator from data contained in Mileage Guide No. 5, without supplements, issued on July 20, 1949, effective August 21, 1949, by the Household Goods Carriers' Bureau, Agent, Washington, D.C.: Mount Vernon or Yonkers in the State of New York; Tenafly, Glen Ridge, East Orange, Elizabeth, Hackensack, Hillside, Irvington, or Passaic in the State of New Jersey. The freight zone for plants located in New York City, Nassau, and Suffolk Counties in the State of New York, or in Essex, Hudson, and Union Counties in the State of New Jersey shall be in the 1- to 10-mile zone. The market administrator shall publicly announce the freight zones for pool plants.

(b) The market administrator shall determine and publicly announce a freight zone for each minor civil division (township, borough, incorporated village, or city) within which farms included in a pool or partial pool unit are located by computing the shortest highway mileage distance from the nearest point in the minor civil division to the nearest point specified in paragraph (a) of this section, using the mileage guide specified in such paragraph supplemented by U.S. Geological Survey maps. In States where the smallest governmental unit except for incorporated cities or villages is the county, a zone for the county shall be determined in the same manner as for minor civil divisions. The zone for each farm shall be the zone of the minor civil division or county in which the farm is located.

(c) The differential rates applicable at plants shall be as set forth in the following schedule:

A—freight zone (miles)	B—classes I-A and I-B (cents per cwt)	C—class II (cents per cwt)
1-10	+59.0	+8
11-20	+56.8	+8
21-25	+54.6	+8
26-30	+54.6	+7
31-40	+52.4	+7
41-50	+50.2	+7
51-60	+48.0	+6
61-70	+45.8	+6
71-75	+28.6	+6
76-80	+28.6	+5
81-90	+26.4	+5
91-100	+24.2	+5
101-110	+22.0	+4
111-120	+19.8	+4
121-125	+17.6	+4
126-130	+17.6	+3
131-140	+15.4	+3
141-150	+13.2	+3
151-160	+11.0	+2
161-170	+8.8	+2
171-175	+6.6	+2
176-180	+6.6	+1
181-190	+4.4	+1
191-200	+2.2	+1
201-210	0.0	0
211-220	1.5	0
221-225	3.0	0
226-230	3.0	1
231-240	4.5	1
241-250	6.0	1
251-260	7.5	2
261-270	9.0	2
271-275	10.5	2
276-280	10.5	3
281-290	12.0	3
291-300	13.5	3
301-310	15.0	4
311-320	16.5	4
321-325	18.0	4
326-330	18.0	5
331-340	19.5	5
341-350	21.0	5
351-360	22.5	6
361-370	24.0	6
371-375	25.5	6
376-380	25.5	7
381-390	27.0	7
391-400	28.5	7
401 and over	30.0	8

(d) The differential rate applicable to each pool unit or partial pool unit shall be computed each month as follows: Multiply the volume of pool milk received from farms in each zone by the rate for that zone as set forth in the schedule in paragraph (c) of this section, add the resulting values for all zones of the unit, divide such sum by the total volume of milk received by the unit and round to the nearest 0.1 cent. Rates shall be computed separately for Columns B and C of such schedule.

(e) In the event that a plant in the 401 miles and over freight zone becomes a pool plant, a 10-mile zone shall be determined for such plant and for each farm in any pool unit delivering to such plant. The Column B differentials in paragraph (c) of this section shall be extended at the same rate as provided in such column for such plant or unit: *Provided*, That in no case shall such differential cause the class price or the uniform price for such plant or unit to be less than the Class II price for such plant or unit: *Provided further*, That farms or units delivering to such plant shall be deemed to be in the same zone as the plant.

[33 FR 8201, June 1, 1968, as amended at 37 FR 2929, Feb. 10, 1972; 46 FR 41756, Aug. 18, 1981]

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EFFECTIVE DATE NOTE: Paragraph (c) of § 1002.51 was revised at 50 FR 45596, Nov. 1, 1985, effective December 1, 1985. At 50 FR 49674, Dec. 4, 1985, the effective date was suspended until further notice. For the convenience of the user, the revised text appears below.

§ 1002.51 Transportation differentials.

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(c) The differential rates applicable at plants shall be as set forth in the following schedule:

A-freight zone (miles)	B-classes I-A and I-B ¹	C-class II ¹
1 to 10	+59.0	+8
11 to 20	+56.8	+8
21 to 25	+54.6	+8
26 to 30	+54.6	+7
31 to 40	+52.4	+7
41 to 50	+50.2	+7
51 to 60	+48.0	+6
61 to 70	+45.8	+6
71 to 75	+43.6	+6
76 to 80	+43.6	+5
81 to 90	+26.4	+5
91 to 100	+24.2	+5
101 to 110	+22.0	+4
111 to 120	+19.8	+4
121 to 125	+17.6	+4
126 to 130	+17.6	+3
131 to 140	+15.4	+3
141 to 150	+13.2	+3
151 to 160	+11.0	+2
161 to 170	+8.8	+2
171 to 175	+6.6	+2
176 to 180	+6.6	+1
181 to 190	+4.4	+1
191 to 200	+2.2	+1
201 to 210	0.0	0
211 to 220	1.5	0
221 to 225	3.0	0
226 to 230	3.0	1
231 to 240	4.5	1
241 to 250	6.0	1
251 to 260	7.5	2
261 to 270	9.0	2
271 to 275	10.5	2
276 to 280	10.5	3
281 to 290	12.0	3
291 to 300	13.5	3
301 to 310	15.0	4
311 to 320	16.5	4
321 to 325	18.0	4
326 to 330	18.0	5
331 to 340	19.5	5
341 to 350	21.0	5
351 to 360	22.5	6
361 to 370	24.0	6
371 to 375	25.5	6
376 to 380	25.5	7
381 to 390	27.0	7
391 to 400	28.5	7
401 and over	30.0	8

¹ Cents per cwt.

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§ 1002.52 [Reserved]

§ 1002.53 Producer-handler price differential.

For skim milk and butterfat received from a handler who is a producer-handler under this or any other order and is assigned to Class I-A pursuant to § 1002.45(a)(5)(i), the transferee handler shall pay a differential equal to the difference between the Class I-A price and the Class II price both appropriately adjusted for differentials pursuant to § 1002.51.

[33 FR 8201, June 1, 1968, as amended at 46 FR 41756, Aug. 18, 1981]

§ 1002.54 Use of equivalent price or index.

If for any reason a price or index specified by this part for use in computing class prices or other purposes is not reported or published in the manner therein described, the market administrator shall use a price or index determined by the Secretary to be equivalent to or comparable with the price or index specified.

§ 1002.55 Transportation credit on bulk unit pool milk disposed of for Class II use.

For pool milk received by a handler in a pool or partial pool unit, a transportation credit at the rate of 15 cents per hundredweight shall be computed.

[42 FR 52380, Sept. 30, 1977]

DETERMINATION OF UNIFORM PRICE

§ 1002.70 Net pool obligation of handlers.

Each handler's net pool obligation for milk received at each plant and unit shall be computed separately pursuant to paragraphs (a) through (d) of this section and then combined into one total to be adjusted by any credit applicable pursuant to paragraph (e) of this section to determine the handler's total net pool obligation.

(a) Multiply the quantity of milk in each class remaining after the computation pursuant to § 1002.45(a)(17) and the corresponding step of § 1002.45(b) by the applicable class price adjusted by the applicable differential pursuant to § 1002.51;

(b) For each partial pool plant or partial pool unit multiply the quantity of pool milk in each class by the applicable class price adjusted by the applicable differential pursuant to § 1002.51;

(c) Deduct, in the case of each plant or unit nearer than the 201-to-210-mile zone and add, in the case of each plant or unit farther than the 201-to-210-mile zone, the sum obtained by multiplying the quantity of pool milk received from dairy farmers by the differential in Column B of § 1002.51(c) applicable at the plant and weighted average Column B differential computed pursuant to § 1002.51(d) applicable to the unit.

(d) Add the amounts computed in paragraphs (d)(1) through (4) of this section:

(1) Multiply the pounds of overage deducted from each class pursuant to § 1002.45(a)(17) and the corresponding step of § 1002.45(b) by the applicable class price adjusted by the differentials pursuant to §§ 1002.51 and 1002.81;

(2) Multiply the difference between the applicable Class I-A and Class II prices, both adjusted by the applicable differential pursuant to § 1002.51, by the pounds of skim milk and butterfat in other source milk subtracted from Class I-A pursuant to § 1002.45(a)(4) and the corresponding step of § 1002.45(b) and by the pounds of skim milk and butterfat specified in § 1002.44(e)(3)(vi);

(3) Multiply the producer-handler price differential by the pounds of skim milk and butterfat subtracted from Class I-A pursuant to § 1002.45(a)(5)(i) and the corresponding step of § 1002.45(b);

(4) Multiply the difference between the Class II price for the preceding month and the Class I-A price for the current month, both applicable at the location of the nearest plant or unit from which an equivalent quantity of Class II milk was received in the preceding month, by the pounds of skim milk and butterfat subtracted from Class I-A pursuant to § 1002.45(a)(7) and the corresponding step of § 1002.45(b);

(e) Deduct any credit applicable pursuant to § 1002.55.

[33 FR 8201, June 1, 1968, as amended at 34 FR 18605, Nov. 22, 1969; 35 FR 16790, Oct. 30, 1970; 39 FR 11981, Apr. 2, 1974; 39 FR 30925, Aug. 27, 1974; 41 FR 8367, Feb. 26, 1976]

§ 1002.71 Computation of the uniform price.

The market administrator shall, on or before the 14th day of each month, audit for mathematical correctness and obvious errors the report submitted for the preceding month by each handler. If the unreserved cash balance in the producer settlement fund to be included in the computation is less than 2 cents per hundredweight of pool milk on all reports, the report of any handler who has not made payment of the last monthly pool debit account rendered pursuant to § 1002.84 shall not be included in the computation of the uniform price. The report of such handler shall not be included in the computation for succeeding months until he has made full payment of outstanding monthly pool debits. Subject to the aforementioned conditions, the market administrator shall compute the uniform price in the following manner:

(a) Combine into one total the net pool obligations of all handlers computed pursuant to § 1002.70;

(b) Subtract the total of payments required to be made pursuant to § 1002.89;

(b-1) Subtract an amount computed by multiplying the quantity of pool milk delivered directly from farms to pool plants and partial pool plants that was not put into a tank truck prior to such delivery, by a rate per hundredweight that is equal to the rate specified in § 1002.55;

(c) Subtract for each of the months of March, April, May, and June an amount computed by multiplying the total hundredweight of pool milk for the month by 20 cents in March, 30 cents in April, and 40 cents in May and June;

(d) Add for the months of August, September, and October, respectively, an amount representing 25 percent, 30 percent, and 30 percent of the aggregate amount subtracted pursuant to paragraph (c) of this section for the prior period of March-June, and for November add the remainder of the amount subtracted pursuant to paragraph (c) of this section and the interest earned on the aggregate fund;

(e) Add the amount of unreserved cash in the producer settlement fund;

(f) Subtract an amount equal to not less than 8 cents nor more than 9 cents per hundredweight of pool milk to provide against the contingency of errors in reports and payments or of delinquencies in payments by handlers; and

(g) Divide the result obtained in paragraph (f) of this section by the total pounds of pool milk delivered by dairy farmers. The result shall be known as the uniform price.

[33 FR 8201, June 1, 1968, as amended at 37 FR 4175, Feb. 29, 1972; 42 FR 52380, Sept. 30, 1977]

PAYMENT BY HANDLERS DIRECTLY TO PRODUCERS

§ 1002.80 Time and rate of payments.

(a) On or before the 25th day of each month each handler shall make payment, pursuant to paragraphs (b), (c), (d), (e), and (f) of this section, to each producer for all pool milk delivered by such producer during the preceding month at not less than the uniform price, subject to the following adjustments:

(1) Appropriate differentials set forth in §§ 1002.81 and 1002.82;

(2) Proper deductions for the month that were authorized in writing by producers from whom the handler received milk (except as specified in paragraph (a)(3) of this section);

(3) For milk received in a bulk tank unit and for which transportation was provided by the handler or at his expense, there may be deducted, as proper and as authorized in writing by the producer, or by a cooperative association authorized to act on behalf of such producer, a tank truck service (transportation) charge. This charge may include any farm-to-first plant transportation costs for which the handler was not reimbursed through the transportation credit pursuant to § 1002.55, but such charge shall be reduced by the amount that the class use location value of milk at the plant of first receipt exceeds its class use location value where the milk was accounted for as a receipt in the bulk tank unit from which the milk was transferred. Any such deduction, plus the transportation credit, and plus the amount of the increase in class use location value of the milk at the plant compared to the unit shall not exceed the actual transportation costs incurred. Any such deduction also must be made by the handler not later than the date on which the producer is required to be paid for such milk. If authorization for such deduction is cancelled by the producer or by the cooperative by notifying the handler in writing, such cancellation shall be effective on the first day of the month following its receipt by the handler; and

(4) For pool milk delivered directly from a farm to a pool plant or a partial pool plant that was not put into a tank truck prior to such delivery, the handler shall pay to the producer an additional amount computed by multiplying the quantity of such milk by a rate per hundredweight that is equal to the rate specified in § 1002.55.

(b) Upon receipt of a written request from a cooperative association which the market administrator determines is authorized by its producer-members to collect payment for their milk, each handler, on or before the date on which the payments are otherwise due individual producers, shall pay the cooperative association for milk received during the month from the producer-members of such association an amount equal to not less than the total amount otherwise due such producer-members as determined pursuant to paragraph (a) of this section.

(c) Each handler which is also a cooperative marketing association, determined by the Secretary to be qualified under the Capper-Volstead Act with respect to producers who are members of and under contract with such association, may make distribution in accordance with the contract between the association and such members of

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the net proceeds of all its sales in all markets in all use classifications.

(d) Whenever verification by the market administrator of the payment to any producer or cooperative association of producers for milk delivered to any handler discloses payment of less than is required by this part, the handler shall make up such payment to the producer or cooperative association of producers not later than the time of making payment next following such disclosure.

(e) If a handler claims that he cannot make the required payment because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, such payment shall be made to the producer settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make such payment from the producer settlement fund to the handler or to the lawful claimant as the case may be.

(f) If not later than the date when such payment is required to be made, legal proceedings have been instituted by the handler for the purpose of administrative or judicial review of the market administrator's findings upon verification as provided above such payment shall be made to the producer settlement fund and shall be held in reserve until such time as the above-mentioned proceedings have been completed or until the handler submits proof to the market administrator that the required payment has been made to the producer or association of producers in which latter event the payment shall be refunded to the handler.

[33 FR 8201, June 1, 1968, as amended at 42 FR 11823, Mar. 1, 1977; 42 FR 52380, Sept. 30, 1977; 46 FR 41756, Aug. 18, 1981]

§ 1002.81 Butterfat differential.

The butterfat differential for the adjustment of prices as specified in this part shall be plus or minus for each one-tenth of 1 percent of butterfat therein above or below 3.5 percent an amount computed as follows: Multiply by 0.115 and round to the nearest one-tenth cent the simple average of the daily wholesale selling prices (using the midpoint of any price range as one price) per pound of Grade A (92-score) bulk creamery butter at Chicago, as reported by the Department for the month.

[36 FR 19010, Sept. 25, 1971]

§ 1002.82 Location differentials.

(a) *Transportation differential.* The transportation differential shall be plus or minus the appropriate differential shown in Column B of the schedule in § 1002.51(c) for the zone of the plant to which the milk is delivered or in the case of farms included in units the zone of the township in which the milk is received.

[33 FR 8201, June 1, 1968, as amended at 46 FR 41757, Aug. 18, 1981]

PRODUCER SETTLEMENT FUND AND ITS OPERATION

§ 1002.83 Producer settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer settlement fund" into which he shall deposit all payments and out of which he shall make all payments pursuant to §§ 1002.85 through 1002.89. All amounts subtracted under § 1002.71(c), inclusive of interest earned thereon, shall remain therein as an obligated balance until it is withdrawn for the purpose of effectuating § 1002.71(d).

§ 1002.84 Handler's accounts.

The market administrator shall establish an account for each handler who is required to make payments to the producer settlement fund or who received payments from the producer settlement fund. After computing the uniform price and each handler's pool debit or credit each month, and at such times as he deems appropriate, the market administrator shall render each handler a statement of his account showing the debit or credit balance, together with all debits or credits entered on such handler's account since the previous statement was rendered: *Provided,* That the handler operating a pool plant receiving milk from a partial pool plant or partial pool unit without producers as defined in § 1002.6, or from a partial pool plant in the 401 miles or over freight zone, shall be responsible for the debit or credit arising on milk so received and for the payment of the administration assessment pursuant to § 1002.90 on such milk.

§ 1002.85 Payments to the producer-settlement fund.

On or before the 21st day of each month each handler shall make full payment to the market administrator of the debit balance, if any, of such handler shown on the last statement of account rendered pursuant to § 1002.84. Payments to the market administrator shall be deemed not to have been made until such payments have been received by the market administrator. If the date by which such payments must be received by the market administrator falls on a Saturday or Sunday or a national holiday, such payments shall not be due until the next day that the market administrator's office is open for public business.

[42 FR 11823, Mar. 1, 1977]

§ 1002.86 Payments out of producer-settlement fund.

(a) On or before the 22nd day of each month the market administrator shall make payment to each handler of the credit balance, if any, of such handler shown on the last statement of account rendered pursuant to § 1002.84. If the date by which such payments are to be made falls on Saturday or Sunday or a national holiday, such payments need not be made until the next day that the market administrator's office is open for public business. If payments to the producer-settlement fund under § 1002.85 were delayed because the due date fell on a Saturday or Sunday or a national holiday, payments under this paragraph may be delayed by the same number of days.

(b) If the balance in the producer-settlement fund is insufficient to make full payment required under paragraph (a) of this section, the market administrator shall reduce uniformly the payments to each handler and shall complete such payments as soon as the necessary funds are available. No handler who, on the 25th day of the month, has not received such payments in full from the market administrator shall be deemed to be in violation of §§ 1002.80 through 1002.82 if he reduces his total payments to producers for milk delivered by such producers during the preceding month by not more than the amount of the reduction in payment from the producer-settlement fund.

[42 FR 11823, Mar. 1, 1977]

§ 1002.87 Handler's pool debit or credit.

After computing the uniform price for each month, the market administrator shall compute each handler's pool debit or credit as follows:

(a) Add the contents computed as follows:

(1) Multiply the quantity of pool milk received by each handler from dairy farmers by the uniform price and;

(2) Multiply the quantity of pool milk received by the handler at a pool plant or partial pool plant directly from farms that was not put into a tank truck prior to delivery by a rate per hundredweight that is equal to the rate specified in § 1002.55.

(b) If the result obtained in paragraph (a) of this section is less than the handler's net pool obligation, the difference shall be entered on the handler's producer settlement fund account as such handler's pool debit.

(c) If the result obtained in paragraph (a) of this section is greater than the handler's net pool obligation, the difference shall be entered on the handler's producer settlement fund account as such handler's pool credit.

[33 FR 8201, June 1, 1968, as amended at 42 FR 52381, Sept. 30, 1977]

§ 1002.88 Adjustments of errors in payments.

Whenever verification by the market administrator of reports or payments of any handler discloses errors made in payments to or from the producer settlement fund, the market administrator shall debit the handler's producer settlement fund account for any unpaid amount. Whenever verification discloses that payment is due from the market administrator to any handler, the market administrator shall credit the handler's producer settlement fund account for any such amount.

§ 1002.88a Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1002.85 and 1002.90 shall be increased 1 percent on the first day after the due date of such obligation and on the same day of each succeeding month until such obligation is paid.

[42 FR 52381, Sept. 30, 1977]

§ 1002.89 Cooperative payments for marketwide services.

Payments shall be made to qualified cooperatives or to federations under the conditions, in the manner, and at the rates set forth in this section.

(a) *Definitions.* As used in this section the following terms shall have the following meanings:

(1) "Cooperative" means a cooperative association of producers which is duly incorporated under the cooperative corporation laws of a state; is qualified under the Capper-Volstead Act (7 U.S.C. 291 et seq.); has all its activities under the control of its members; and has full authority in the sale of its members' milk.

(2) "Federation" means a federation of cooperatives which is duly incorporated under the laws of a State.

(3) "Federated cooperatives" means a cooperative which is a member of a federation and on whose membership the federation is an applicant for or receives payments under paragraph (f)(2) of this section.

(4) "Affiliated cooperatives" means a cooperative upon whose entire membership another cooperative, by mutual consent, is an applicant for or receives payments under paragraph (f)(2) of this section.

(5) "Member producer" means, when used with respect to a cooperative or federation which is an applicant for or is receiving payments, is a producer as defined in § 1002.6 who has met the following conditions:

(i) He is a member of the cooperative or one of its affiliated cooperatives, or in the case of a federation, he is a member of one of its federated cooperatives from whom the cooperative, affiliated cooperative, or federated cooperative is receiving at least 1 cent per hundredweight of milk delivered by him: *Provided,* That the cooperative of which he is a member is meeting the requirements of this part applicable to it;

(ii) He has been a producer, or his farm, as defined in § 1002.10, had been the farm of a producer for at least a prior 12-month period; and

(iii) He has not for a prior 12-month period been a member producer of another cooperative or federation: *Provided,* That in the case of membership transfers resulting from mergers of designated organizations, or from affiliation, federation or merger of cooperatives not previously meeting the definition of paragraph (a)(3) or (a)(4) of this section, this paragraph shall not apply.

(6) "Marketwide services" means services performed by cooperatives or federations, as defined herein, which benefit all producers in the marketing of their milk under this order; such services are not limited to those specified in paragraphs (e)(1) through (6) of this section and may include services directly or indirectly related to the order.

(b) *Designated cooperatives and federations.* A cooperative or federation may submit an application to the market administrator for payments under the provisions of this section or for modification of the basis of a previous designation. In accordance with the requirements of the rules and regulations issued by the market administrator such application shall include a written description of the applicant's program for the performance of marketwide services, including evidence that adequate facilities and personnel will be maintained by it so as to enable it to perform the marketwide services; and the application shall contain a statement by the applicant that it will perform the required marketwide services for which it is applying for payments: *Provided,* That in the case of an application for modification of the basis for a previous designation the market administrator may waive the requirement for submission of the written description of the programs.

The application shall set forth all necessary data so as to enable the market administrator to determine whether it meets the designation requirements with respect to the payments for which the application is submitted. An application shall be approved by the market administrator only if he determines that:

(1) In the case of a cooperative;

(i) It has as member producers not less than 15 percent of all producers, as defined in § 1002.6;

(ii) It has contracts with each of its affiliated cooperatives under which the cooperatives agree to continue as affiliated cooperatives for at least 1 year, and such contracts cover or will be renewed for a yearly period for every subsequent year for which member producers of the affiliated cooperative are to be included within its membership for cooperative payment purposes;

(iii) It receives from each of its affiliated cooperatives not less than 1 cent per hundredweight of milk delivered by member producers of such cooperatives; and

(iv) If the application is also for an additional payment under paragraph (f)(3) of this section, the cooperative or its affiliated cooperatives operate marketing facilities, i.e., pool plants and pool bulk tank units, at which is received at least 25 percentum, by weight, of all milk delivered by its member producers; and, in addition, the cooperative or its affiliated cooperatives control processing facilities capable of handling at least 10 percentum, by weight, of all milk marketed by its member producers: *Provided*, That such processing facilities must be capable of handling not less than 1 million pounds of milk daily: *Provided further*, That the cooperative must be willing to accept nonmember milk on a temporary basis under the generally prevailing conditions for acceptance of milk from its own members.

(2) In the case of a federation:

(i) It has contracts with each of its federated cooperatives under which the cooperatives agree to remain in the federation for at least 1 year, and such contracts cover or will be renewed for a yearly period for every subsequent year for which the federated cooperatives are to be included within the membership of the federation for cooperative payment purposes;

(ii) It has as member producers not less than 15 percent of all producers, as defined in § 1002.6;

(iii) It receives from each of its federated cooperatives not less than 1 cent per hundredweight of milk delivered by member producers of such cooperative;

(iv) If the application is also for an additional payment under paragraph (f)(4) of this section, the federation or its federated cooperatives operate marketing facilities, i.e., pool plant(s) and pool bulk tank unit(s), at which is received at least 25 percentum, by weight, of the milk marketed by its member producers; and, in addition, the federation or its federated cooperatives control processing facilities capable of handling at least 10 percentum, by weight, of all milk marketed by its member producers: *Provided*, That such processing facilities must be capable of handling not less than 1 million pounds of milk daily: *Provided further*, That the federation must be willing to accept nonmember milk on a temporary basis under the generally prevailing conditions for such acceptance of milk from its own members.

(3) The applicant cooperative or federation demonstrates that it has the ability to perform the marketwide services for which application is made, and that such services will be performed.

(4) The applicant cooperative or the federated cooperatives of an applicant federation are in no way precluded from arranging for the utilization of milk under their respective control so as to yield the highest available net return to all producers without displacing an equivalent quantity of other producer milk in the preferred classification.

(c) *Notice of designation or denial; effective date.* Upon determination by the market administrator that a cooperative or a federation shall be designated to receive payment for performance of the marketwide services, he shall transmit such determination to the applicant cooperative or federation and publicly announce the issu-

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ance of the determination. The determination shall be effective with respect to milk delivered on and after the first day of the month following issuance of the determination. If, after consideration of an application for payments for marketwide services, the market administrator determines that the cooperative or federation is not qualified to receive such payments he shall promptly notify the applicant and specifically set forth in such notice his reasons for denial of the application.

(d) *Requirements for continued designation.* From time to time and in accordance with the rules and regulations which may be issued by the market administrator, each designated cooperative or federation must demonstrate to the market administrator that it continues to meet the designation requirements for the payments and is fully performing the marketwide services for which it is being paid.

(e) *Marketwide services.* Each cooperative or federation shall perform the marketwide services enumerated in this paragraph. Such services shall include:

(1) Analyzing milk marketing problems and their solutions, conducting market research and maintaining current information as to all market developments, preparing and assembling statistical data relative to prices and marketing conditions, and making an economic analysis of all such data; (2) determining the need for the formulation of amendments to the order and proposing such amendments or requesting other appropriate action by the Secretary or the market administrator in the light of changing conditions; (3) participating in proceedings with respect to amendments to the order, including the preparation and presentation of evidence at public hearings, the submission of appropriate briefs and exceptions, and also participating, by voting or otherwise, in the referenda relative to amendments; (4) participating in the meetings called by the market administrator, such as meetings with respect to rules and regulations issued under the order, including activities such as the preparation and presentation of data at such meetings and briefs for submission thereafter; (5) conducting a comprehensive education program among producers—i.e., members and nonmembers of cooperatives—and keeping such producers well informed for participation in the activities under the regulatory order and, as a part of such program, issuing publications that contain relevant data and information about the order and its operation, and the distribution of such publications to members and, on the same subscription basis, to nonmembers who request it, and holding meetings at which members and nonmembers may attend; (6) in the case of a cooperative or federation which receives an additional payment under paragraph (f)(3) or (4) of this section, operating marketing facilities, or having affiliated cooperatives or federated cooperatives that operate marketing facilities, i.e., pool plant(s) and pool bulk tank unit(s), at which is received at least 25 percentum, by weight, of milk marketed by its member producers; and in addition, controls, or having affiliated cooperatives or federated cooperatives that control processing facilities capable of handling at least 10 percentum, by weight, of the milk marketed by its member producers: *Provided,* That such processing facilities must be capable of handling at least one million pounds of milk daily: *Provided further,* That the cooperative or federation must be willing to accept nonmember milk on a temporary basis under the generally prevailing conditions for such acceptance of milk of its own members; and (7) performing such other services as are needed to maintain satisfactory marketing conditions and promote market stability.

(f) *Rate, computation, time, and method of payment.* (1) Subject to the provisions of paragraph (g) of this section, the market administrator, on or before the 25th day of each month, shall make payment out of the producer-settlement fund, or issue equivalent credit therefore, to each cooperative or federation which is designated for such payments for marketwide services. The payments to a cooperative or federation shall be based upon the milk reported by cooperative or proprietary handlers to have been received during the preceding month from its member producers, subject to adjustment upon verification by the market administrator.

(2) Such payment or credit shall be at the rate of 3 cents per hundredweight of milk in accordance with paragraph (f)(1) of this section.

(3) Any cooperative that operates marketing facilities or whose affiliated cooperatives operate marketing facilities, i.e., pool plant(s) and pool bulk tank unit(s), at which is received at least 25 percentum, by weight, of the milk marketed by its member producers, and, in addition, controls, or has affiliated cooperatives that control, processing facilities capable of handling, at least 10 percentum, by weight, of the milk marketed by its member producers but not less than one million pounds of milk daily shall receive a payment in addition to that provided for in paragraph (f)(2) of this section of one cent per hundredweight of all milk marketed by member producers in accordance with paragraph (f)(1) of this section.

(4) Any federation that operates marketing facilities, or whose federated cooperatives operate marketing facilities, i.e., pool plant(s) and pool bulk tank unit(s), at which is received at least 25 percentum, by weight, of the milk marketed by its member producers, and, in addition, controls, or whose federated cooperatives control, processing facilities capable of handling at least 10 percentum of the milk marketed by its member producers but not less than 1 million pounds daily, shall receive a payment, in addition to the payment provided for in paragraph (f)(2) of this section, of 1 cent per hundredweight of all milk marketed by member producers in accordance with paragraph (f)(1) of this section.

(5) If an individually designated cooperative is affiliated with a federation, the cooperative payment shall be made to such cooperative unless its contract with the federation specified in writing that the federation is to receive the payments. Any such contract must authorize the federation to receive the payments for at least 1 year, and such agreement must cover or be renewed for a yearly period for every subsequent year for which the federation is to receive the payments.

(g) *Cancellation of designation.* (1) The market administrator shall issue an order wholly or partly canceling the designation of a previously designated cooperative or federation for payments authorized pursuant to this section and such payments shall not thereafter be made to it if he determines that:

(i) The cooperative or federation no longer complies with the requirements of this part: *Provided,* That if one of its affiliated or federated cooperatives has failed to comply with the requirements of this part applicable to it or has failed, promptly after demand by the market administrator, to arrange for the utilization of milk under its control so as to yield the highest available net return to all producers without displacing an equivalent quantity of other producer milk in the preferred classification, the cooperative or federation shall be disqualified only to the extent that its qualification for payments or the amount of its payment are based upon the membership, milk, or operations of such noncomplying affiliated or federated cooperatives.

(ii) The cooperative or federation has failed to make reports or furnish records pursuant to this section or pursuant to rules and regulations issued by the market administrator; or

(iii) In the case of the cooperative, it has failed, promptly after demand by the market administrator, to arrange for the utilization of milk under its control so as to yield the highest available net return to all producers without displacing an equivalent quantity of other producer milk in the preferred classification.

(2) An order of the market administrator wholly or partly canceling the designation of a cooperative or federation shall not be issued until after the cooperative or federation has had opportunity for hearing thereon following not less than 15 days' notice to it specifying the reasons for the proposed cancellation. If the cooperative or federation fails to file a written request for hearing with the market administrator within such period of 15 days, the market administrator may

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issue an order of cancellation without further notice: But if within such period a request for hearing is filed, the market administrator shall promptly proceed to hold such hearing pursuant to rules and regulations issued by him under paragraph (i) of this section.

(3) A cancellation order issued by the market administrator shall set forth the findings and conclusions on the basis of which it is issued.

(h) *Appeals*—(1) *From denials of application.* Any cooperative or federation whose application for designation has been denied by the market administrator may, within 30 days after notice of such denial, file with the Secretary a written petition for review. But the failure to file such petition shall not bar the cooperative or federation from again applying to the market administrator for designation.

(2) *From cancellation orders.* A cancellation order by the market administrator shall become final 30 days after its service on the cooperative or federation unless within such 30-day period the cooperative or federation files a written petition with the Secretary for review thereof. If such petition for review is filed, payments for which the cooperative or federation has been canceled by the order shall be held in reserve by the market administrator pending ruling of the Secretary, after which the sums so held in reserve shall either be returned to the producer-settlement fund or paid over to the cooperative or federation depending on the Secretary's ruling on the petition. If such petition for review is not filed, any payments which otherwise would be made within the 30-day period following issuance of the cancellation order shall be held in reserve until such order becomes final and shall then be returned to the producer-settlement fund.

(3) *Record on appeal.* If an appeal is taken under paragraph (h) (1) or (2) of this section the market administrator shall promptly certify to the Secretary the ruling or order appealed from and the evidence upon which it was issued: *Provided,* That if a hearing was held the complete record thereof, including the applications, petitions, and all exhibits or other documentary material submitted in evidence shall be the record so certified. Such certified material shall constitute the sole record upon which the appeal shall be decided by the Secretary.

(i) *Regulations.* The market administrator is authorized to issue regulations and amendments thereto to effectuate the provisions of this section and to facilitate and implement the administration of its provisions. Such regulations shall be issued in accordance with the following procedure:

(1) All proposed rules and regulations and amendments thereto shall be the subject of a meeting called by the market administrator, at which all interested persons shall have opportunity to be heard. Not less than 5 days prior to the meeting, notice thereof and of the proposed regulations or amendments shall be published in the FEDERAL REGISTER and mailed to qualified cooperatives and federations. A stenographic record shall be made at such meetings which shall be public information and be available for inspection at the office of the market administrator.

(2) A period of at least 5 days after the meeting shall be allowed for the filing of briefs.

(3) All regulations and amendments thereto issued by the market administrator pursuant to this section must be submitted in tentative form to the Secretary for approval, shall not be effective without such approval, and shall be published in the FEDERAL REGISTER following such approval. The regulations or amendments in tentative form shall be forwarded also to cooperatives and federations designated under this section and to other persons upon request in writing. The Secretary shall either approve the regulations or amendments thereto submitted by the market administrator or direct the market administrator to reconsider the tentative rules or amendments. In the event the market administrator is directed to give reconsideration to the matter, the market administrator shall either issue revised tentative regulations or amendments or call another meeting pursuant to this section for additional consideration of the rules or amendments.

(j) *Reports and records.* Each designated cooperative or federation shall, in accordance with rules and regulations issued by the market administrator:

(1) After submission to the market adminstrator for verification, make a public report of its performance of marketwide services pursuant to this section, including data on its receipts and expenditure of cooperative payments funds and a description of the marketwide services performed. The report shall contain a certification by the market administrator that the report is, to the best of his knowledge, accurate and in accordance with the rules and regulations which he has established.

(2) Submit an annual report to the market administrator which shall include:

(i) A concise report of its performance of marketwide services and allocations of expenditures to such performance for the previous year; and

(ii) An outline of its proposed program and budget for performance of marketwide services for the coming year.

(3) Make such additional reports to the market administrator as may be requested by him for the administration of the provisions of this section.

(4) Maintain and make available to the market administrator or his representative such records as will enable the market administrator to verify such reports.

(k) *Notices, demands, orders, etc.* All notices, demands, orders, or other papers required by this section to be given to or served upon a cooperative or federation shall be deemed to have been given or served as of the time when mailed to the last known secretary of the cooperative or federation at his last known address.

(l) *Adjustment period.* Any cooperative or federation which was qualified on the effective date of this section, to receive payments pursuant to the provisions of § 1002.89 as effective, referred to in this paragraph as the "former provisions", shall continue to receive payments pursuant to and subject to the conditions specified in such former provisions on milk received during the 100-day period immediately following the effective date of this section; and if such cooperative or federation has applied for designation pursuant to this section at least 80 days prior to the expiration of such 100-day period, it shall continue to receive payments pursuant to the former provisions until such time as the market administrator has ruled upon such application: *Provided,* That a cooperative or federation may be designated to receive payments pursuant to this section within such 10-day period: *Provided further,* That in no event shall a cooperative or federation receive payments under the former provisions for any period following the effective date of designation of the cooperative or federation under this section: *And provided further,* That the waiting periods prescribed in paragraphs (a)(5)(ii) and (iii) of this section shall not apply to member producers whose milk deliveries were part of the basis for payments to the applicant under the former provisions immediately prior to designation pursuant to this section. For the purpose and to the extent specified in this paragraph, the provisions of § 1002.89 as effective shall remain in force and effect after the effective date of this section.

[33 FR 14230, Sept. 20, 1968]

EXPENSE OF ADMINISTRATION

§ 1002.90 Payment by handlers.

As his pro rata share of the expense of administration of this part, each handler shall, on or before the date specified for making payment to the producer-settlement fund pursuant to § 1002.85, pay to the market administrator a sum not exceeding 4 cents per hundredweight on the total quantity of pool milk received from dairy farmers at plants or from farms in a unit operated by such handler, directly or at the instance of a cooperative association of producers and on the quantity for which payment is made pursuant to § 1002.70(d)(2), the exact amount to be determined by the market administrator subject to review by the Secretary. This section shall not be deemed to duplicate any similar payment by any handler under an order issued by the Commissioner of Agriculture and Markets of the State of New York, or the Director of the Division of Dairy Industry of the New Jersey Department of Agriculture, with respect to the marketing area. Whenever verification by the market administrator discloses an error in the payment made by any handler, such error shall be adjusted not later than the date next following such disclosure on which payments are due pursuant to this section.

[42 FR 11823, Mar. 1, 1977]

Subpart—Classification and Accounting Rules and Regulations

SOURCE: 33 FR 9533, June 29, 1968, unless otherwise noted.

DEFINITIONS

§ 1002.100 Definitions.

The terms used herein shall have the same definitions as are set forth in the orders. In addition, for the purpose only of classifying and accounting for skim milk and butterfat under the terms of the orders, other terms shall have the meanings set forth in §§ 1002.101 through 1002.129.

§ 1002.101 The Orders.

"The Orders" means Order No. 2, as amended, issued by the Secretary, and any concurrent and complementary orders issued by the Commissioner of Agriculture and Markets of the State of New York or the Director of the Division of Dairy Industry of the New Jersey Department of Agriculture.

[44 FR 21003, Apr. 9, 1979]

§ 1002.102 Milk.

"Milk" means (a) the product delivered to a plant or a tank truck by dairy farmers as cow's milk, or (b) the product composed of skim milk and of not less than 3 percent but less than 10 percent butterfat, to which may or may not have been added ingredients other than those derived from milk, such ingredients not to exceed 4 percent. The addition of water as such at any plant shall not be considered the addition of a nonmilk ingredient for purposes of this definition. This definition shall not be deemed to include products that are included in other definitions.

§ 1002.103 Skim milk.

"Skim milk" means any part or parts of milk as defined in § 1002.102(a) except butterfat and shall include water as provided for in § 1002.40.

§ 1002.104 Fluid skim milk.

"Fluid skim milk" means the product consisting principally of uncondensed skim or skim milk in an equivalent form containing 0.5 percent butterfat or less.

§ 1002.105 Low test milk.

"Low test milk" means the product containing skim milk and more than 0.5 percent but less than 3 percent butterfat

§ 1002.106 Cultured or flavored milk drinks.

"Cultured or flavored milk drink" means a cultured or flavored beverage containing skim milk and butterfat but less than 18 percent butterfat or the mixture from which such product is made at any plant. This definition includes but is not limited to the products properly known as buttermilk, chocolate milk, and chocolate drink.

§ 1002.107 Yogurt.

"Yogurt" means the product containing skim milk and butterfat but less than 10 percent butterfat which has been fermented by the addition of a harmless milk culture. Flavor or fruits may be added. Other milk products may be added during the process of manufacture.

§ 1002.108 Eggnog.

"Eggnog" means the product composed of skim milk and butterfat, sugar or other sweetening agents, egg yolk solids and flavoring agents and is marketed as eggnog. Other milk products may be added during the process of manufacture.

§ 1002.109 Cream.

"Cream" means the combination of skim milk and butterfat which contains 18 percent or more butterfat, to which may or may not have been added ingredients other than those derived from milk, such ingredients not to exceed 4 percent. The addition of water as such at any plant shall not be considered the addition of a nonmilk ingredient of purposes of this definition. This definition shall not be deemed to include products that are included in other definitions.

§ 1002.110 Sour cream.

"Sour cream" means cream which has been fermented by the addition of a lactic acid or other harmless milk culture.

§ 1002.111 Plastic cream.

"Plastic cream" means cream which contains 75 percent or more of butterfat.

§ 1002.112 Storage cream.

"Storage cream" (sometimes referred to as frozen cream) means cream which was moved to a licensed cold storage warehouse and established to have been held therein.

§ 1002.113 Half and half and sour half and half.

(a) "Half and half" means the product composed of skim milk and of not less than 10 percent but less than 18 percent butterfat to which may or may not have been added ingredients other than those derived from milk, such ingredients not to exceed 4 percent. The addition of water as such at any plant shall not be considered the addition of a nonmilk ingredient for purposes of this definition. This definition shall not be deemed to include products that are included in other definitions.

(b) "Sour half and half" means half and half which has been fermented by the addition of a lactic acid or other harmless milk culture.

§ 1002.114 Frozen desserts.

"Frozen desserts" means those products commonly known as ice cream, ice milk, frozen custard, sherbet, and frozen confections such as, but not restricted to, Bisque Tortoni, Spumoni, creamsicles, fudgsicles, popsicles, mousses, parfaits, puddings (such as Nesselrode puddings), and decorations for the frozen desserts, but not including products properly known as candy.

§ 1002.115 Frozen dessert mix.

"Frozen dessert mix" means a mixture containing milk solids, not less than 5 percent moisture and not less than 5 percent sugar (or other sweetening agent), or other ingredients, which is homogenized and is either used at any plant in the manufacture of frozen desserts or is in the same form as mixtures commonly so used. This definition shall not be deemed to include products included in § 1002.106.

§ 1002.116 Whipped topping mixture.

"Whipped topping mixture" means a product which results from the mixture of milk solids, moisture, sugar or other sweetening agents, flavor, and stabilizer, and which is used for distribution packaged with harmless gas causing it to fluff upon ejection from the package or container. The ingredients contained therein other than those derived from milk must exceed 4 percent. The addition of water as such at any plant shall not be considered the addition of a nonmilk ingredient for purposes of this definition.

§ 1002.117 Concentrated fluid milk.

"Concentrated fluid milk" means the unsterilized product resulting from the evaporation of water from milk which product contains not less than 5 percent butterfat, not less than 20 percent total milk solids, and not less than 5 percent moisture to which may or may not have been added ingredients other than those derived from milk, such ingredients not to exceed 4 percent. The addition of water as such at any plant shall not be considered the addition of a nonmilk ingredient for purposes of this definition. Other milk products may be added during the process of manufacture.

§ 1002.118 Evaporated milk.

"Evaporated milk" means the product resulting from the evaporation of water from milk which product contains not less than 7.8 percent butterfat and not less than 25.9 percent total milk solids, and which product is packed in hermetically sealed cans. Other milk products, stabilizer, or vitamin D may be added during the process of manufacture. Failure to meet the minimum percentages set forth herein by an amount not to exceed 2 percent of the percentages set forth herein shall not disqualify a product from meeting this definition.

§ 1002.119 Plain condensed milk.

"Plain condensed milk" means the unsterilized product resulting from the evaporation of water from milk which product contains not less than 5 percent butterfat, not less than 20 percent total milk solids, and not less than 5 percent moisture. They may or may not contain sugar or other sweetening agents, but such sugar or other sweetening agents shall be equivalent to less than 38 percent sugar or equivalent sweetening agents. Other milk products may be added during the process of manufacture.

§ 1002.120 Sweetened condensed milk.

"Sweetened condensed milk" means the product resulting from the evaporation of water from milk or plain condensed milk and the addition of sugar or other sweetening agent. It shall contain not less than 8 percent butterfat, 28 percent total milk solids, and 38 percent sugar or equivalent sweetening agent. Other milk products may be added during the process of manufacture.

§ 1002.121 Milk powder.

"Milk powder" means the product which results from the removal of water from milk, cream, plain condensed milk, or fluid skim milk, with or without the addition of other products, and which contains not less than 10 percent butterfat, and not more than 5 percent moisture.

§ 1002.122 Part skim milk powder and skim milk powder.

"Part skim milk powder" means the product which results from the removal of water from fluid skim milk or condensed skim milk which contains 1.5 percent or more but less than 10 percent butterfat and not more than 5 percent moisture. This definition includes but is not limited to products known as dried buttermilk and dried whey.

"Skim milk powder" means the product which results from the removal of water from fluid skim milk or condensed skim milk which contains less than 1.5 percent butterfat and not more than 5 percent moisture.

§ 1002.123 Other concentrated milk products.

"Other concentrated milk products" means the products named and described as follows:

(a) Malted milk products, products which are made by combining milk or other products containing butterfat with liquids separated from mash or ground barley malt and wheat flour, with or without the addition of other products, and by removing water. They shall contain not more than 40 percent moisture and not more than 15 percent butterfat.

(b) Ice cream powder, the product containing milk solids, sugar (or other sweetening agent), and other ingredients, prepared for use in making frozen desserts. It shall contain not less than 26 percent butterfat and not more than 5 percent moisture.

(c) Plain condensed skim milk, the product resulting from the evaporation of at least 50 percent of the water from fluid skim milk. Other products may be added during the process of manufacture. This definition includes but is not limited to the products known as condensed skim milk, sweetened condensed skim milk and condensed buttermilk.

(d) Sweetened, part skim, condensed milk, the product resulting from the evaporation of water from milk or plain condensed milk and the addition of sugar or other sweetening agent. It shall contain not less than 5 percent but less than 8 percent butterfat, not less than 28 percent total milk solids and not less than 38 percent sugar or equivalent sweetening agent. Other milk products may be added during the process of manufacture.

(e) The product which meets all the requirements of evaporated milk as set forth in § 1002.118 with the exception that other vitamins and minerals not to exceed 0.5 percent of the total weight of the product may be added during the process of manufacture.

§ 1002.124 Cheese.

"Cheese" means the product made from the separated curd obtained by coagulating the casein of milk, fluid skim milk, or cream.

§ 1002.125 Cheddar cheese.

"Cheddar cheese," "American Cheddar cheese," "Colby cheese," "washed curd cheese," and "part skim Cheddar cheese" means those cheeses manufactured for sale under one of these names and made from milk or fluid skim milk by the Cheddar, Colby, or washed curd process.

§ 1002.126 Cream cheese.

"Cream cheese" means cheese manufactured for sale under the name of "cream cheese," "neufchatel cheese," "cream cheese curd," or as a cheese with a cream cheese or neufchatel cheese base and made by the cream cheese or neufchatel process. The curd shall contain not less than 20 percent butterfat and the cheese may have nonmilk products added but may not have other cheese added. Failure to meet the minimum percentage set forth herein by an amount not to exceed 2 percent of the percentage set forth herein shall not disqualify a product from meeting this definition.

§ 1002.127 Butter.

"Butter" means the product containing not less than 80 percent butterfat resulting from churning cream. Failure to meet this minimum percentage by an amount not to exceed 1 percent of such percentage shall not disqualify the product from meeting this definition.

§ 1002.128 Dispenser insert.

A "dispenser insert" when used in conjunction with a fluid milk product means that the fluid milk product is in a container from which it may be dispensed through a self contained valve or other mechanical means for human consumption on the premises of the purchaser.

§ 1002.129 Packaged: consumer packages.

The term "packaged" or "consumer packages" when used in conjunction with a fluid milk product means that the fluid milk product is in a container of 8 quarts or less or dispenser insert of any size. A fluid milk product in any other container will be considered to have been handled in bulk.

PROCEDURE FOR ACCOUNTING FOR THE RECEIPT AND DISPOSITION OF SKIM MILK AND BUTTERFAT, AND SHRINKAGE AND OVERAGE AT A POOL PLANT

§ 1002.140 Method.

Skim milk and butterfat shall be accounted for at the plant on a monthly basis and shall be classified separately pursuant to §§ 1002.4[illegible] through 1002.46 in the following manner:

(a) On the basis of the skim milk and butterfat in fluid milk products which are held at a plant, moved from a plant, dumped at a plant, destroyed or lost under extraordinary circumstances, or used at the plant to produce products other than fluid milk products;

(b) On the basis of the fluid skim milk equivalent and butterfat content of all products, other than fluid milk products, which are reprocessed, converted, or combined with another product during the month or for which the handler fails to establish a disposition.

[44 FR 21003, Apr. 9, 1979]

§ 1002.141 Preliminary accounting for other than fluid milk products at pool plants.

(a) Separately tabulate the total pounds of each product other than a fluid milk product contained in opening inventory and received at the plant.

(b) Separately tabulate the total pounds of each product other than a fluid milk product contained in closing inventory at or moved from the plant.

(c) If the sum of the tabulation in paragraph (a) of this section exceeds the sum of the tabulation in paragraph (b) of this section, the excess shall be considered for further accounting as a receipt of other source milk as defined in § 1002.16(b) and (c).

(d) If the sum of the tabulation in paragraph (b) of this section exceeds the sum of the tabulation in paragraph (a) of this section, the excess shall be considered as the products manufactured and shall be subject to further accounting as a product produced in the current month.

(e) When a product other than a fluid milk product manufactured during the month is reprocessed, converted or combined with another product during the same month, the fluid milk products and other source milk used in the first instance shall be considered to have been used directly in the product resulting from such reprocessing, conversion or combining.

(f) When condensed skim milk or skim milk powder manufactured in a month are used to fortify a fluid milk product in the same month, the skim milk equivalent of that portion of such products which is in excess of the volume included in the fortified fluid milk product shall be determined and accounted for in accordance with § 1002.246(b) and (c).

§ 1002.142 Skim milk and butterfat to be accounted for at a pool plant.

(a) Tabulate and total the pounds of skim milk:

(1) In milk received from dairy farmers at the plant;

(2) In fluid milk products in the opening inventories at the plant, separately in bulk and packaged form;

(3) In fluid milk products in transit from other pool plants in accordance with § 1002.221(b), separately in bulk and packaged form;

(4) In fluid milk products received at the plant from other plants separately in bulk and packaged form or from units;

(5) In other source milk other than a fluid milk product determined to be a receipt pursuant to § 1002.141(c) at its skim milk content or equivalent.

The total of the skim milk so tabulated shall be known as the total skim milk to be accounted for.

(b) Butterfat shall be separately tabulated and totaled in accordance with the procedure outlined for skim milk in paragraph (a) of this section, except that the words "or equivalent" in paragraph (a)(5) of this section shall not apply.

§ 1002.143 Skim milk and butterfat accounted for at a pool plant.

(a) Tabulate, total, and classify the pounds of skim milk:

(1) In fluid milk products transferred to other plants, disposed of from the plant, dumped at the plant, or destroyed or lost under extraordinary circumstances;

(2) In fluid milk products in closing inventories at the plant;

(3) In fluid milk products in transit from other pool plants in accordance with § 1002.221(b);

(4) In fluid milk products and in other source milk used in the plant in the manufacture of other than fluid milk products;

(5) In the skim milk equivalent of skim milk powder and condensed skim milk determined pursuant to § 1002.246 (b) and (c) to be in excess of the volume included in the fluid milk products accounted for in paragraphs (a)(1) and (2) of this section.

In the event that the skim milk in fluid milk products is classified in more than one class, the tabulation should be subdivided to show the quantity of skim milk in each class. The total of all skim milk so tabulated shall be known as the skim milk accounted for.

(b) Butterfat shall be separately tabulated, totaled, and classified in accordance with the procedure outlined for skim milk in paragraph (a) of this section, except that paragraph (a)(5) shall not apply.

[44 FR 21004, Apr. 9, 1979]

§ 1002.144 Skim milk and butterfat shrinkage and overage at a pool plant.

(a) Subtract the total skim milk accounted for determined pursuant to § 1002.143 from the total skim milk to be accounted for pursuant to § 1002.142. If there is a remainder, it shall be known as shrinkage. In the event that the total skim milk accounted for is greater than the total skim milk to be accounted for, the excess shall be known as overage.

(b) Butterfat shrinkage and overage shall be determined in accordance with the procedure outlined for skim milk in paragraph (a) of this section.

§ 1002.145 Shrinkage allowance.

Shrinkage shall be allocated to a handler's receipts and classified at each plant as follows:

Add to the skim milk and butterfat in Class II the skim milk and butterfat determined pursuant to paragraphs (a) (1) and (2) of this section: *Provided*, That the skim milk and butterfat assigned to Class II pursuant to paragraph (a)(1) of this section may not exceed the skim milk and butterfat determined in paragraph (b) of this section.

Add to the skim milk and butterfat in Class I-A and Class I-B the amounts determined in paragraph (c) of this section.

(a) Shrinkage of skim milk and butterfat, respectively, shall be prorated between the respective quantities of skim milk and butterfat:

(1) In receipts described in paragraph (b) of this section; and

(2) In other source milk not specified in paragraph (b) of this section which was received in bulk fluid form.

(b) Determine and total as follows:

(1) Two percent of the skim milk and butterfat, respectively, in pool milk received from producers;

(2) Plus 2 percent of the skim milk and butterfat, respectively, in milk received from pool units;

(3) Plus 2 percent of the skim milk and butterfat, respectively, in milk received from units other than pool units, exclusive of the quantity for which Class II utilization was requested by the handler;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in receipts of fluid milk products in bulk from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in receipts of fluid milk products in bulk from an other order plant, exclusive of the quantity for which Class II utilization was requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in receipts of fluid milk products in bulk from plants other than those defined in § 1002.8 (b) or (d), exclusive of the quantity for which Class II utilization was requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraphs (b) (1) through (6) of this section;

(c) Shrinkage in excess of the amounts assigned to Class II pursuant to this section shall be assigned pro rata to Class I-A and Class I-B in accordance with the respective volumes of skim milk and butterfat actually accounted for in each such class.

[44 FR 21004, Apr. 9, 1979]

ALLOCATION OF SKIM MILK AND BUTTERFAT CLASSIFIED TO SKIM MILK AND BUTTERFAT IN OPENING INVENTORIES AND RECEIVED IN FLUID MILK PRODUCTS AND RECEIVED IN OTHER SOURCE MILK AT A POOL PLANT OR POOL UNIT

§ 1002.160 Procedure for allocation of skim milk and butterfat classified.

This procedure is set forth in § 1002.45.

[44 FR 21004, Apr. 4, 1979]

CLASSIFICATION OF SKIM MILK AND BUTTERFAT TRANSFERRED IN THE FORM OF A FLUID MILK PRODUCT TO A PLANT WHICH IS NOT A POOL PLANT, AN OTHER ORDER PLANT NOR A PRODUCER-HANDLER PLANT UNDER ANY OTHER ORDER

§ 1002.180 Assignment at a plant which is not a pool plant, an other order plant nor a producer-handler plant under any other order.

Skim milk and butterfat transferred in the form of a fluid milk product from a pool unit or a pool plant to a plant which is not a pool plant, an other order plant nor a producer-handler plant under any order shall be classified as Class IA, unless the requirements of paragraphs (a) and (b) of this section are met, in which case the skim milk and butterfat so transferred shall be classified in accordance with the assignment resulting from paragraph (c) of this section: *Provided*, That if the classification of any skim milk and butterfat so transferred is dependent on the classification of bulk fluid milk products moved from the transferee plant to a second nonpool plant, the same assignment procedure shall be followed with respect to receipts and utilization at such second nonpool plant. If fluid milk products are moved in bulk form from the transferee plant to a second nonpool plant and the requirements of § 1002.180(b) are met by the operator of such second nonpool plant, the classification of the fluid milk products so moved shall be determined by the procedure required by § 1002.180(c) except that the assignment of such fluid milk products to Class IA and Class IB shall not be less than the quantities which would be assigned to those classes if the fluid milk products were received at the second nonpool plant as a transfer directly from the pool plant or pool unit.

(a) The transferring handler claims classification pursuant to the assignment set forth in paragraph (c) of this section in his report submitted to the market administrator pursuant to § 1002.30 for the month within which such transaction occurred;

(b) The operator of such transferee plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for the purpose of verification.

(c) The skim milk and butterfat so transferred shall be classified on the basis of the following assignment of utilization at such transferee plant:

(1) Packaged receipts of fluid milk products from Federal order sources shall first be assigned to route disposition in Federal order marketing areas (assigning receipts to sales in the same market to the extent possible) and any residual shall be assigned to IB route sales.

(2) Such bulk transfer and other bulk receipts at such transferee plant from other order plants shall next be assigned to any remaining route disposition in any Federal order marketing area. For this purpose receipts from each Federal order market shall first be assigned to remaining route sales in such marketing area and any remainder of such receipts shall be prorated with all Federal order receipts to remaining route disposition in all Federal order marketing areas.

(3) Receipts from dairy farmers shall then be assigned to any remaining route sales in the marketing area.

(4) Remaining receipts from dairy farmers and other unregulated other source receipts (excluding opening inventory) in the form of fluid milk products shall be assigned pro rata to Class IB and Class II utilization at such plant to the extent of such utilization available at such plant and any remainder of such receipts shall be assigned pro rata to Class IA bulk sales to plants regulated under this order and Class I bulk sales to plants regulated under other orders.

(5) Any remaining receipts being assigned pursuant to this subparagraph shall be assigned pro rata with remaining receipts from other order plants, first to remaining Class IA utilization, then Class IB utilization and finally to Class II utilization at such plant: *Provided*, That if on inspection of the books and records of such plant the market administrator finds that there is insufficient utilization to cover such receipts, the remainder shall be classified as Class IA.

(6) Any remaining Class I-A route disposition in the marketing area shall be subject to the pricing specified in § 1002.70(d)(2).

[33 FR 9533, June 29, 1968, as amended at 44 FR 21004, Apr. 9, 1979]

INVENTORIES

§ 1002.220 Method of accounting for closing inventories.

Skim milk and butterfat in the form of fluid milk products shall be accounted for and classified by the handler at the time of filing reports in accordance with § 1002.30 as follows:

(a) As Class IA in the form of packaged fluid milk products at a pool plant.

(b) As Class II in the form of bulk fluid milk products at a pool plant or in bulk or packaged fluid milk products at a plant not defined in § 1002.8(b) or (d).

§ 1002.221 Method of accounting for fluid milk products in transit at the end of a month from a pool plant to a pool plant.

All fluid milk products transferred from a pool plant but not received until the following month at the transferee pool plant shall be considered in transit and shall be accounted for in the following manner:

(a) At the transferor plant, transfers which are in transit shall be included in the disposition in the month in which shipped.

(b) At the transferee plant, transfers which are in transit shall be considered to have been received in the same month as shipped and shall be included in the closing inventory thereat.

(c) At the transferee plant, transfers which were in transit and were included in the closing inventory pursuant to paragraph (b) of this section shall be included in the following month's opening inventory.

§ 1002.222 Method of accounting for fluid milk products in transit at the end of a month from a pool plant to a plant other than a pool plant.

All fluid milk products transferred from a pool plant but not received until the following month at a transferee plant which is not a pool plant shall be considered in transit and shall be accounted for in the following manner:

(a) At the transferor plant, such transfers shall be accounted for as a closing inventory in the month in which shipped and as a disposition in the following month.

(b) At the transferee plant, transfers pursuant to paragraph (a) of this section shall be accounted for as receipts in the month in which received.

§ 1002.223 Method of accounting for fluid milk products in transit at the end of a month from a pool bulk tank unit to any plant.

All fluid milk products transferred from a pool bulk tank unit but not received until the following month at the transferee plant shall be considered in transit and shall be accounted for in the following manner:

(a) At the transferor bulk tank unit, transfers which are in transit shall be included in the disposition in the month in which shipped.

(b) At the transferee plant, tranfers which are in transit shall be considered to have been received in the same month as shipped and shall be included in the closing inventory thereat.

(c) At the transferee plant, transfers which were in transit and were included in the closing inventory pursuant to paragraph (b) of this section shall be included in the following month's opening inventory.

[46 FR 45325, Sept. 11, 1981]

CONVERSION FACTORS FOR ACCOUNTING PURPOSES

§ 1002.230 Butterfat tests.

In the absence of information establishing the butterfat content of the listed products the following table shall be used:

Product	Test in percent
Skim milk (other than reconstituted)	0.1
Cream, heavy	36.0
Cream, medium (New Jersey)	30.0
Cream, medium (outside of New Jersey)	25.0
Cream, light	18.0
Cream, sour	18.0
Cream, plastic	75.0
Half and half	10.0
Half and half, sour	10.0
Butter	80.0
Plain condensed milk	5.0
Concentrated fluid milk (established to have been packaged in consumer packages)	14.0
Evaporated milk	7.8
Sweetened condensed milk	8.0
Plain condensed skim milk	[1]0.3
Sweetened condensed skim milk	[1]0.5
Skim milk powder	[1]1.1
Whipped topping mixture	19.0
Frozen dessert mix (except chocolate)	10.0
Frozen dessert mix (chocolate)	3.0
Frozen dessert mix (ice milk)	2.0
Frozen dessert mix (sherbet)	1.0
Cream cheese (sold as cream cheese)	33.0
Cream cheese (sold as Neufchatel)	20.0

[1] When these products are used for reconstitution or fortification of fluid milk products, they will be considered to contain no butterfat.

§ 1002.231 Milk solids not fat tests.

In the absence of information establishing the milk solids not fat content of the listed products, the following table shall be used:

Product	Test in percent
Plain condensed milk	15.0
Concentrated fluid milk (established to have been packaged in consumer packages)	15.0
Evaporated milk	17.7
Sweetened condensed milk	20.0
Plain condensed skim milk	20.0
Sweetened condensed skim milk	28.0
Whipped topping mixture	7.0
Frozen dessert mix (except chocolate)	10.0
Frozen dessert mix (chocolate)	8.0
Frozen dessert mix (ice milk)	9.0
Frozen dessert mix (sherbet)	1.0

§ 1002.232 Weights.

In the absence of information establishing the weight of the listed products, the following tables shall be used:

(a) Fluid milk products (except dairy farmer milk, cultured or flavored milk drinks, and concentrated fluid milk) yogurt, storage cream, plastic cream, sour cream, and sour half and half.

Range of butterfat (percent)	Weight per gallon (pounds)
Less than 1.0	8.63
1.00 but less than 3.00	8.62
3.00 but less than 5.00	8.60
5.00 but less than 9.00	8.58
9.00 but less than 14.00	8.55
14.00 but less than 19.00	8.51
19.00 but less than 23.00	8.48
23.00 but less than 27.00	8.45
27.00 but less than 29.00	8.43
29.00 but less than 31.00	8.41
31.00 but less than 33.00	8.40
33.00 but less than 35.00	8.39
35.00 but less than 37.00	8.37
37.00 but less than 39.00	8.36
39.00 but less than 41.00	8.35
41.00 but less than 43.00	8.33
43.00 but less than 45.00	8.32
45.00 but less than 47.00	8.30
47.00 but less than 49.00	8.29
49.00 but less than 51.00	8.28

(b) Other products.

Product	Weight per gallon (pounds)
Dairy farmer milk	8.60
Cultured milk drinks	8.60
Flavored milk drinks	8.00
Plain condensed milk	9.10
Concentrated fluid milk	9.10
Concentrated fluid milk (established to have been packaged in consumer packages)	9.20
Evaporated milk	9.10
Sweetened condensed milk	10.80
Sweetened condensed skim milk	11.20
Frozen dessert mix (except chocolate)	9.10
Frozen dessert mix (chocolate)	9.25
Frozen dessert mix (ice milk)	9.10
Frozen dessert mix (sherbet)	9.10
Whipped topping mixture	8.65

§ 1002.233 Weights and equivalents of condensed skim milk and skim milk powder.

In the absence of information establishing the weight or skim milk equivalent of condensed skim milk and skim milk powder the following table shall be used:

CONDENSED SKIM MILK

A—Percent total solids in the mixture	B—Weight per gal (pounds)	C—Product skim equivalent factor	D—Class II skim equivalent factor
Less than 24.5	9.10	2.281	1.333
24.5 but less than 25.5	9.22	2.851	1.915
25.5 but less than 26.5	9.26	2.965	2.033
26.5 but less than 27.5	9.30	3.079	2.151
27.5 but less than 28.5	9.34	3.193	2.269
28.5 but less than 29.5	9.38	3.307	2.387
29.5 but less than 30.5	9.42	3.421	2.505
30.5 but less than 31.5	9.46	3.536	2.624
31.5 but less than 32.5	9.51	3.649	2.742
32.5 but less than 33.5	9.55	3.763	2.860
33.5 but less than 34.5	9.59	3.877	2.977
34.5 but less than 35.5	9.63	3.991	3.095
35.5 but less than 36.5	9.68	4.105	3.214
Skim milk powder		11.000	10.360

METHOD OF DETERMINING SKIM MILK AND BUTTERFAT IN SPECIFIC PRODUCTS

§ 1002.240 Skim milk and butterfat in milk.

(a) Butterfat in milk except standardized milk which is transferred or disposed of from a plant or utilized at a plant shall be at the average test of milk received from farms at such plant except, if the classification of the milk so transferred or disposed of is assigned pursuant to § 1002.160 to milk received from another plant or unit or

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from dairy farmers reported by a cooperative, the test of such milk shall be the average test of milk received from farmers at such other plant or unit or reported by such cooperative.

(b) Butterfat in milk received from a unit or transferred from or disposed of by a unit shall be at the average test of all milk received at farms by the unit and in the same quantities.

(c) Skim milk in milk the butterfat content of which is determined pursuant to paragraphs (a) and (b) of this section shall be the weight of the milk less the butterfat determined to be contained therein.

§ 1002.241 Skim milk and butterfat in standardized milk.

(a) The butterfat content of milk established to have been standardized shall be the same as the butterfat in the milk cream and skim milk used to make such standardized milk less the butterfat in any fluid milk product removed to effect standardization.

(b) Skim milk in standardized milk shall be the weight of the standardized milk less the butterfat content determined pursuant to paragraph (a) of this section.

§ 1002.242 Skim milk and butterfat in low test milk.

(a) The butterfat content of low test milk shall be the same as the butterfat in the milk, cream, and skim milk used to make the product.

(b) Skim milk in low test milk shall be the weight of the product less the butterfat content determined pursuant to paragraph (a) of this section.

§ 1002.243 Skim milk and butterfat contained in cream, storage cream, half and half, skim milk and cultured milk drinks.

(a) Determine the weight of the product. In the absence of information establishing weights, convert volume to weight by the use of the conversion factor in § 1002.232.

(b) Determine the total amount of butterfat in the product on the basis of butterfat tests. In the absence of information establishing the butterfat content, determine the butterfat content by the application of § 1002.230, except that the butterfat content of cultured milk drinks shall be assumed to be the same as the butterfat content of all dairy products used in the manufacture of such cultured milk drinks.

(c) The skim milk content shall be the total weight of the product determined pursuant to paragraph (a) of this section less the butterfat content determined pursuant to paragraph (b) of this section.

§ 1002.244 Skim milk and butterfat contained in plastic cream, sour cream, sour half and half and butter when received as other source milk.

(a) Determine the weight of the product. In the absence of information establishing weights, convert volume to weight by the use of the conversion factor in § 1002.232.

(b) Determine the total amount of butterfat in the product on the basis of butterfat tests. In the absence of information establishing the butterfat content, determine the butterfat content by the application of § 1002.230.

(c) The skim milk content shall be the total weight of the product determined pursuant to paragraph (a) of this section less the butterfat content determined pursuant to paragraph (b) of this section.

§ 1002.245 Skim milk and butterfat contained in flavored milk drinks.

(a) If the weight and the fat test of the product have been established on the basis of available information:

(1) Determine the total amount of fat in the product on the basis of fat tests and weight of the product.

(2) Determine the total weight of the nondairy ingredients other than water contained in the product and the fat content of such nondairy ingredients.

(3) Determine the butterfat content of the product by subtracting from the total fat content of the product, the fat content of the nondairy products used.

(4) Determine the skim milk content of the product by subtracting from the total weight of the product, the butterfat content of the product and total weight of the nondairy ingredients

other than water used in the manufacture of the product.

(b) In the absence of information establishing weights or tests, the weight of the product shall be determined in accordance with § 1002.232(b):

(1) The butterfat content shall be considered to be the same as the butterfat content of the products used in the manufacture of the flavored milk drink.

(2) The skim milk content shall be determined by deducting from the total weight of the flavored milk drink the butterfat determined to be contained therein pursuant to paragraph (b)(1) of this section.

§ 1002.246 Skim milk equivalent of condensed skim milk and skim milk powder.

(a) The skim milk equivalent of condensed skim milk and skim milk powder in other source milk receipts shall be determined by multiplying the pounds of condensed skim milk or skim milk powder by the appropriate factor in Column C of the table in § 1002.233.

(b) When condensed skim milk or skim milk powder are used to fortify fluid milk products the skim milk equivalent of that portion of such products which is in excess of the volume included in the fortified fluid milk product shall be determined by multiplying the pounds of condensed skim milk and skim milk powder by the factor in Column D in the table in § 1002.233. The skim milk equivalent so determined shall be accounted for as a Class II disposition. Condensed skim milk and skim milk powder used to fortify fluid milk products will be considered to contribute no butterfat to the product so fortified.

(c) When condensed skim milk and skim milk powder are used to reconstitute skim milk, the amount by which the skim milk equivalent of the condensed skim milk and skim milk powder, exceeds the pounds of reconstituted skim milk produced, shall be accounted for as a Class II disposition.

§ 1002.247 Skim milk equivalents and butterfat content of other manufactured products.

(a) Determine the weight of the product. In the absence of information establishing weights, determine the weight by the use of the conversion factor in § 1002.232 (a) or (b).

(b) Determine the total amount of fat in the product on the basis of fat test and the weight of the product. In the absence of information establishing fat tests, the butterfat test of the product shall be determined by the use of the appropriate butterfat test in § 1002.230.

(c) If the total amount of fat in the product has been determined on the basis of fat test:

(1) Determine the total weight of the nondairy ingredients other than water contained in the product and the fat content of such nondairy ingredients.

(2) Determine the butterfat content of the product by subtracting from the total fat content of the product, the fat content of the nondairy products used.

(d) Determine the milk solids not fat content of the product on the basis of the milk solids not fat test and the weight of the product. In the absence of information establishing milk solids not fat tests, such test shall be determined by the use of the appropriate milk solids not fat test in § 1002.231.

(e) Determine the skim milk equivalent of the milk solids not fat in the product by multiplying such milk solids not fat by 11.4.

§ 1002.248 Skim milk and butterfat in whey and whey products and in churn buttermilk and churn buttermilk products.

Skim milk and butterfat on hand at or leaving the plant in the form of whey and whey products and in churn buttermilk and churn buttermilk products together with the skim milk and butterfat contained in the cheese or butter shall be considered the net result of the fluid milk products and other source milk used: *Provided,* That if skim milk and butterfat in whey and whey products and in churn buttermilk and churn buttermilk prod-

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ucts are held in closing inventory or disposed of from the plant in the form of a fluid milk product, such skim milk and butterfat contained in these products shall be treated as fluid milk products. The skim milk and butterfat claimed to have been used in the manufacture of cheese and butter shall be reduced by the quantities of skim milk and butterfat determined to be contained in these fluid milk products.

§ 1002.249 Skim milk and butterfat used to manufacture products other than fluid milk products.

Skim milk and butterfat, in the form of fluid milk products and other source milk, claimed to have been used in the manufacture of other than fluid milk products will be allowed as claimed in the light of the skim milk and butterfat contained in the finished products. The evaluation of each claim shall include a full consideration of all available information.

METHOD OF DETERMINING MAXIMUM ALLOWABLE TANK TRUCK SERVICE CHARGES

SOURCE: Sections 1002.250 through 1002.253 appear at 46 FR 45325, Sept. 11, 1981, unless otherwise noted.

§ 1002.250 Authorization for hauling deductions.

An authorization, properly signed before its effective date, will be necessary for any tank truck service charge deduction to be allowed pursuant to the provisions of § 1002.80(a)(3). For producers who are members of a cooperative, the authorization must be obtained from the cooperative involved. Each authorization must contain the following:

(a) The handler's name.

(b) The basis for determining the deduction from the producer payment. If the resulting per hundredweight charge will vary among producers on the bulk tank unit, an explanation of the basis for determining the deduction for producers on the unit must be included.

(c) A statement that any deduction is limited by the orders to not more than the actual cost of farm-to-plant hauling for the bulk tank unit minus the transportation credit of 15 cents per hundredweight and minus any increase in the class location value between the bulk tank unit and plant of first receipt.

(d) If changes in the basis for determining deductions are to take effect after advance notice without signing of new authorizations, a statement must so indicate. (Without this statement, any change in the basis for determining deductions will require a new authorization.)

(e) The date when the authorization becomes effective. (First pickup.)

(f) An authorized signature and the date signed.

§ 1002.251 Reports by handlers of the claimed basis for producer hauling deductions.

For each bulk tank unit for which deductions are to be made from producer payments for tank truck service charges in accordance with § 1002.80(a)(3), the handler shall report the following to the market administrator:

(a) By the 15th day of the month in which these regulations become effective, an itemized listing of estimated costs incurred in the transportation of milk from the farm(s) to plant(s) of first receipt as proposed to be used as the basis for the calculation of deductions from payments to producers and for which the handler is prepared to show how such costs are to be determined and to maintain appropriate records to substantiate costs as listed.

(b) On or before the last day of each month for milk delivered in the preceding month:

(1) An itemized listing of actual costs incurred in the transportation of producer milk from the farm(s) to plant(s) of first receipt claimed as the basis for deductions from payments to producers as shown on the producer payroll submitted to the market administrator.

(2) The applicable rate basis used for calculation of deductions made from payments to producers.

§ 1002.252 Determination of maximum allowable tank truck service charge deductions.

Total deductions by a handler for tank truck service charges from all producers on a bulk tank unit in accordance with § 1002.80(a)(3) may not exceed the amount calculated as follows:

(a) Actual costs incurred by the handler in transporting the milk from the farm(s) to the point where either paragraph (a) (1) or (2) takes place:

(1) It is received at a plant as defined in § 1002.8: *Provided*, That milk reloaded from one tank truck to another will not be considered as so received if it is reloaded at a facility that:

(i) Contains no functional equipment for stationary storage, separation, or processing other than necessary to cool and pump milk from one tank truck to another; and

(ii) Is separate from the premises of any plant as defined in § 1002.8.

(2) It is commingled with the milk of another bulk tank unit (by either combining of milk or use of a common reload facility) during a given month, unless classification at each plant destination is passed back in the same proportions to each of the commingled units.

(b) Minus:

(1) The total value of the transportation credit received by the handler pursuant to § 1002.55.

(2) The total of the amounts that the value in paragraph (b)(2) (ii) of this section exceeds the value in paragraph (b)(2) (i) of this section for the milk transferred to each plant from the bulk tank unit:

(i) The class use value of the milk at the location of the bulk tank unit pursuant to § 1002.51(d);

(ii) The class use value of the milk at the location of the plant where the milk is first received, based on the mileage zone for the plant as determined by the market administrator.

§ 1002.253 Verification of deductions by the handler for tank truck service charges.

All costs claimed by the handler in the reports filed in accordance with § 1002.251 as the basis for deductions from the producer for tank truck service charges are subject to audit under the following guidelines:

(a) Costs not directly related to the transportation of milk from the farm to first plant of receipt are not to be included.

(b) Costs for items utilized in a given month are to be charged to that month.

(c) Costs for items having a useful life of more than one month such as depreciation, licenses and insurance and certain repair and maintenance items are to be allocated over an annual or other reasonable period.

(d) Costs based solely on bills from a hauling company in which handler has an ownership interest are not to be included. For inclusion, such costs must be verifiable on the same basis as costs incurred directly by the handler.

(e) Deductions in excess of the maximum allowable hauling deduction in an amount greater than 5 cents per hundredweight are to be reimbursed to the producer by separate check.

MISCELLANEOUS

§ 1002.260 Procedure for establishing fluid milk products dumped.

Fluid milk products that are dumped may be classified as Class II only to the extent that the following procedure is followed:

(a) The market administrator is given prior notice and the opportunity to verify the fluid milk products to be dumped.

(1) Prior notice is given during normal business hours by telephone to the office of the market administrator.

(2) Prior notice at other times is given by calling any of a list of special telephone numbers provided by the market administrator.

(b) Route returns are dumped between the hours of 9 a.m. and 4:45 p.m., Monday through Friday, except holidays. Notice is given by calling the office of the market administrator prior to 3 p.m. of the day dumpage takes place.

(c) On dumpage other than route returns, a representative sample of the dumped product taken by the handler is made available to the market administrator.

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[44 FR 21004, Apr. 9, 1979]

Subpart—Conduct of Hearings Relating to Suspended Cooperative Payments

SOURCE: 17 FR 8802, Oct. 3, 1952, unless otherwise noted. Redesignated at 26 FR 12752, Dec. 30, 1961.

SCOPE OF SUBPART

§ 1002.300 Scope of subpart.

Sections 1002.300 to 1002.353 constitute regulations governing the conduct of the hearing to be afforded to a cooperative association under Order No. 2 (§§ 1002.1 to 1002.99) after cooperative payments to the association have been suspended by the market administrator.

DEFINITIONS

§ 1002.301 Act.

"Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended.

§ 1002.302 Order No. 2.

"Order No. 2" means the order, as amended, regulating the handling of milk in the New York metropolitan marketing area (§§ 1002.1 to 1002.99).

§ 1002.303 Secretary.

"Secretary" means the Secretary of Agriculture or any officer or employee of the Department to whom the Secretary has heretofore lawfully delegated, or to whom the Secretary may hereafter lawfully delegate, the authority to act in his stead.

§ 1002.304 Director.

"Director" means the Director of the Dairy Division, Agricultural Marketing Service, or any other officer or employee of the Department of Agriculture to whom the Administrator or Deputy Administrator of the Agricultural Marketing Service of the Department delegates the authority to act in the place and stead of the Director with respect to the matters set forth in this subpart.

[17 FR 8802, Oct. 3, 1952. Redesignated at 26 FR 12725, Dec. 30, 1961, and amended at 37 FR 8059, Apr. 25, 1972]

§ 1002.305 Market Administrator.

"Market Administrator" means the agency designated to administer Order No. 2 (§§ 1002.1 to 1002.99).

§ 1002.306 Presiding Officer.

"Presiding Officer" means the examiner in the Office of Hearing Examiners, who has been designated by that office to conduct the hearing described in § 1002.300.

§ 1002.307 Office of Hearing Examiners.

"Office of Hearing Examiners" means the Office of Hearing Examiners of the United States Department of Agriculture.

§ 1002.308 Hearing Clerk.

"Hearing Clerk" means the Hearing Clerk of the United States Department of Agriculture.

§ 1002.309 Solicitor.

"Solicitor" means the Solicitor of the United States Department of Agriculture.

§ 1002.310 Person.

"Person" means any individual, partnership, corporation, association, or any other business unit.

§ 1002.311 Party.

"Party" means (a) the Director of (b) the cooperative association whose eligibility to receive suspended cooperative payments under Order No. 2 (§§ 1002.1 to 1002.99) is the subject of the hearing.

§ 1002.312 Cooperative association.

"Cooperative association" means the cooperative association whose eligibility to receive suspended cooperative payments under Order No. 2 (§§ 1002.1 to 1002.99) is the subject of the hearing.

PRE-HEARING PROCEDURE

§ 1002.321 Service of notice of suspension.

Whenever the Market Administrator suspends and holds in reserve any cooperative payments to a cooperative association he shall serve the required notification upon the cooperative association by registered mail addressed to it at its last known address and the required notification to the Secretary shall be accomplished by the Market Administrator filing with the Hearing Clerk four copies of the notification to the cooperative association together with a statement of service thereof upon the cooperative association: *Provided*, That this section shall not be applicable to suspensions pending on October 6, 1952: *And provided further*, That the Director shall supply to the Hearing Clerk three copies of the notification issued on suspensions pending on October 6, 1952. Upon receipt of the notice of suspension, the Hearing Clerk shall transmit copies thereof to the Director and the Solicitor.

§ 1002.322 Request for hearing.

Within thirty days after service upon a cooperative association of the Market Administrator's notice of suspension or within thirty days after October 6, 1952, the cooperative association shall file with the Hearing Clerk a request for a hearing to afford it an opportunity to establish its eligibility to receive the suspended payments. The failure of a cooperative association to file such a request shall constitute a waiver of hearing and the Secretary may rule, without further hearing, that the cooperative association is disqualified from receiving the suspended payments. Upon receipt of a request for hearing the Hearing Clerk shall transmit copies thereof to the Director, the Solicitor and the Market Administrator.

§ 1002.323 Notice of hearing.

(a) *Issuance and contests.* As soon as practicable after the filing by a cooperative association of a request for hearing, the Director shall file with the Hearing Clerk a notice stating that a hearing will be held at a time and place to be designated by the Presiding Officer and specifying the matters which will be inquired into at the hearing.

(b) *Service.* Upon receipt of the notice of hearing, or amendments thereto, the Hearing Clerk shall serve copies thereof on the Office of Hearing Examiners, the cooperative association, the Market Administrator and the Solicitor.

(c) *Amendments.* Amendments to the notice of hearing may be filed with the Hearing Clerk at any time prior to the hearing or may be made orally or otherwise at the hearing by the Director or his representative. If the amendments are made at the hearing, the Presiding Officer shall recess the hearing for a reasonable time if the cooperative association shows that it would otherwise be prejudiced by such amendments.

§ 1002.324 Notice of time and place of hearing.

(a) *Issuance and contents.* Within a reasonable time following request by the cooperative association or by the Director, or upon his own motion, the Presiding Officer shall fix a time and place for hearing, not earlier than 15 days after filing of the notice of hearing, and shall file with the Hearing Clerk a notice, in quintuplicate, stating the time and place of hearing. If any change in the time and place of hearing becomes necessary, it shall be made by the Presiding Officer who in such event shall file with the Hearing Clerk a notice of the change.

(b) *Service.* Upon receipt of the notice of time and place of hearing, the Hearing Clerk shall promptly serve copies thereof on the cooperative association, the Director, the Market Administrator and the Solicitor.

§ 1002.325 Depositions.

(a) *Procedure in lieu of deposition.* Before any party may have testimony taken by deposition, said party shall, if practicable, submit to the other party an affidavit which shall set forth the facts to which the witness would testify, if the deposition should be taken. If, after examination of such affidavit, the other party agrees, or (within 10 days after submission of the affidavit) fails to object, that the affidavit may be used in lieu of the deposition, the Presiding Officer shall admit the affidavit in evidence and shall not order the deposition to be taken.

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(b) *Issuance and use of depositions.* Depositions may be applied for, ordered, taken and admitted in evidence in accordance with the procedure described in and subject to the conditions set forth in § 900.61 of this chapter.

§ 1002.326 Subpenas, witness fees and mileage.

(a) *Issuance of subpenas.* The attendance of witnesses and the production of documentary evidence from any place in the United States on behalf of any party to the proceeding may, by Subpena, be required at any designated place of hearing. Subpenas may be issued by the Secretary or by the Presiding Officer, under the facsimile signature of the Secretary, upon a reasonable showing by the applicant of the grounds, necessity, and reasonable scope thereof.

(b) *Application for subpena duces tecum.* Subpenas for the production of documentary evidence, unless issued by the Presiding Officer upon his own motion, shall be issued only upon a verified written application. Such application shall specify, as exactly as possible, the documents desired and shall show their competency, relevancy, and materiality and the necessity for their production.

(c) *Service of subpenas.* Subpenas may be served (1) by a United States Marshal or his deputy, or (2) by any other person who is not less than 18 years of age, or (3) by registering and mailing a copy of the subpena addressed to the person to be served at his or its last known residence or principal place of business or residence. Proof of service may be made by the return of service on the subpena by the United States Marshal or his deputy; or, if served by an individual other than a United States Marshal or his deputy, by an affidavit of such person stating that he personally served a copy of the subpena upon the person named therein; or, if service was by registered mail, by an affidavit made by the person mailing the subpena that it was mailed as provided herein and by the signed return post-office receipt: *Provided,* That, if the subpena is issued on behalf of the Department, the return receipt without an affidavit of mailing shall be sufficient proof of service. In making personal service, the person making service shall leave a copy of the subpena with the person subpenaed; the original, bearing or accompanied by the required proof of service, shall be returned to the official who issued the same.

(d) *Fees and mileage.* Witnesses who are subpenaed and who appear in such proceeding, including witnesses whose depositions are taken, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and persons taking depositions shall be entitled to the same fees as are paid for like services in the courts of the United States, to be paid by the party at whose request the deposition is taken. Witness fees and mileage shall be paid by the party at whose instance the witnesses appear, and claims therefor, as to witnesses subpenaed on behalf of the Department, shall be proved before the person issuing the subpena, and, as to witnesses subpenaed on behalf of any other party, shall be presented to such party.

§ 1002.327 Representation of parties.

Parties may appear in person or by counsel or other representatives.

§ 1002.328 Failure to appear.

If the cooperative association, after being duly notified, fails to appear at the hearing, or otherwise waives a hearing, the Secretary may, without further procedure, rule that it is disqualified from receiving the suspended payments. If the cooperative association appears at the hearing, but no representative of the Department appears, the Presiding Officer shall proceed to hear the evidence of the cooperative association: *Provided,* That failure of the Department to appear at a hearing shall not be deemed to be a waiver of its right to file suggested findings of fact; conclusions and order; to be served with a copy of the Presiding Officer's report and to file exceptions thereto.

§ 1002.329 Order of proceeding and burden of proof.

The cooperative association shall proceed first at the hearing and shall have the burden of proving its eligibility to receive the suspended payments.

§ 1002.330 Evidence.

(a) *In general.* The hearing shall be publicly conducted, and the testimony given at the hearing shall be reported verbatim. The testimony of witnesses at a hearing shall be upon oath or affirmative and subject to cross-examination. Any witness may, in the discretion of the Presiding Officer, be examined separately and apart from all other witnesses except those who may be parties to the proceeding. The Presiding Officer shall exclude, insofar as practicable, evidence which is immaterial, irrelevant, or unduly repetitious, or which is not of the sort upon which responsible persons are accustomed to rely.

(b) *Objections.* If a party objects to the admission or rejection of any evidence or to the limitation of the scope of any examination or cross-examination, he shall state briefly the grounds of such objection, whereupon an automatic exception will follow if the objection is overruled by the Presiding Officer. The transcript shall not include argument or debate thereon, except as ordered by the Presiding Officer. The ruling of the Presiding Officer on any objection shall be a part of the transcript. Only objections made before the Presiding Officer may subsequently be relied upon in the proceeding.

(c) *Affidavits.* Affidavits may be admitted only if the evidence is otherwise admissible and the parties agree (which may be determined by their failure to make timely objections) that affidavits may be used

(d) *Proof and authentication of official records or documents.* An official record or document, when admissible for any purpose, shall be admissible in evidence without the production of the person who made or prepared the same. Such record or document shall, in the discretion of the Presiding Officer, be evidenced by an official publication thereof or by a copy attested by the person having legal custody thereof and accompanied by a certificate that such person has the custody.

(e) *Exhibits.* All written statements, charts, tabulations, or similar data offered in evidence at the hearing shall, after identification by the proponent and upon a satisfactory showing of the admissibility of the contents thereof, be numbered as exhibits and received in evidence and made a part of the record. Except where the Presiding Officer finds that the furnishing of copies is impracticable, five copies of each exhibit shall be filed with the Presiding Officer.

(f) *Incorporation by reference.* If the testimony of a witness refers to a statute, or to a report, document, or transcript, the Presiding Officer, after inquiry relating to the identification of such statute, report, document, or transcript, shall determine whether the same shall be produced at the hearing and physically be made a part of the evidence as an exhibit, or whether it shall be incorporated into the evidence by reference. If relevant and material matter offered in evidence is embraced in a report, document, or transcript containing immaterial or irrelevant matter, such immaterial or irrelevant matter shall be excluded and shall be segregated insofar as practicable, subject to the direction of the Presiding Officer.

(g) *Official notice.* Official notice will be taken of such matters as are judicially noticed by the courts of the United States and of any other matter of technical, scientific, or commercial fact of established character: *Provided,* That the parties shall be given adequate notice, at the hearing or by reference in the Presiding Officer's report or the tentative order or otherwise, of matters so noticed, and shall be given adequate opportunity to show that such facts are erroneously noticed.

(h) *Offer of proof.* Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the transcript. If the proffered evidence consists of a brief oral statement, it shall be inserted into the transcript in its entirety, or in the case of an exhibit, it shall be marked for identification. In either such event, it shall be considered evidence of record if the Secretary decides that the Presiding Officer's ruling in excluding the evidence was erroneous: *Provided*, That upon application of either party the evidence shall be reoffered subject to cross-examination and rebuttal, at a reopened hearing. If the taking of the proferred evidence will consume a considerable length of time at the hearing, the Presiding Officer shall limit the offer of proof to a brief description of the evidence offered. In the latter event, if the Secretary decides that the Presiding Officer erred in excluding the evidence, and that such error was prejudicial, the hearing shall be reopened to permit the taking of such evidence.

§ 1002.331 Transcript.

A copy of the transcript shall be kept on file in the office of the Hearing Clerk, where it shall be available for examination during official hours of business. Such copy shall remain the property of the Department and may not be removed from said office. If a copy of the transcript is desired, such copy may be obtained upon written application filed with the reporter, and upon payment of fees at the rate (if any) provided in the contract between the reporter and the Secretary.

POST-HEARING PROCEDURE

§ 1002.340 Filing the transcript of evidence.

As soon as practicable after the close of the hearing, the Presiding Officer shall cause to be transmitted to the Hearing Clerk the transcript of the testimony and the exhibits received at the hearing together with his certificate stating that, to the best of his knowledge and belief, the transcript is a true, correct and complete transcript of the testimony given in the hearing, except in such particulars as he shall specify, and that the exhibits transmitted are all the exhibits received at the hearing, with such exceptions as he shall specify. The Hearing Clerk shall note upon the transcript each correction specified in such certificate by adding or crossing out (but without obscuring the text as originally transcribed) any words necessary to make the text conform to the correct meaning as certified by the Presiding Officer.

§ 1002.341 Proposed findings, conclusions and orders.

Within 10 days (unless the Presiding Officer shall have announced at the hearing a shorter or longer period of time) after the transcript has been filed with the Hearing Clerk, as provided in § 1002.340, each party may file with the Hearing Clerk proposed findings of fact, conclusions, and order, based upon the record, and briefs in support thereof.

§ 1002.342 Presiding Officer's report.

The Presiding Officer, within a reasonable time after the termination of the period allowed for the filing of proposed findings of fact, conclusions, and orders, and briefs in support thereof, shall prepare, upon the basis of the record, and shall file with the Hearing Clerk, his report, a copy of which (together with notification of the date fixed by the Presiding Officer for the filing of exceptions thereto) shall be served by the Hearing Clerk upon each of the parties. Such report shall include his recommended findings, conclusion and order.

§ 1002.343 Exceptions.

Within a period of time (to be fixed by the Presiding Officer but not to exceed 20 days) after the filing of the Presiding Officer's report, the parties may file exceptions to the report. Any party who desires to take exception to any matter set out in the report shall file his exceptions with the Hearing Clerk, referring, where practicable, to the relevant pages of the transcript, and suggesting a corrected finding of fact, conclusion, or order. Within the same period of time, each party shall file with the Hearing Clerk a brief statement in writing concerning each of the objections taken to the action of the Presiding Officer, upon which the party wishes to rely, referring, where practicable, to the pertinent pages of the transcript. A party, if he files exceptions or a statement of objections, shall state in writing whether he desires to make an oral argument thereon before the Secretary; otherwise, it shall be considered that he does not desire to make such oral argument.

§ 1002.344 Transmittal to Secretary.

Immediately upon the expiration of the period for filing exceptions, the Hearing Clerk shall transmit to the Secretary the complete record of the proceeding, including the Presiding Officer's report, and the exceptions thereto, if any.

§ 1002.345 Argument before Secretary.

(a) *Oral argument.* Unless a party has included in his exceptions a request for oral argument or has filed a separate request for oral argument prior to the expiration of the last date for filing such exceptions, it shall be considered that he does not desire to make such oral argument. The granting of a request to make oral argument shall rest in the discretion of the Secretary.

(b) *Briefs.* The parties may, in the discretion of the Secretary, file written briefs either in addition to oral argument or in lieu thereof.

(c) *Scope of argument.* Except where the Secretary determines that argument on additional issues would be helpful, argument, whether oral or in a written brief, shall be limited to the issues raised by the exceptions and statement of objections, or to such issues as the Secretary may indicate. If the Secretary determines that additional issues should be argued, counsel for the parties shall be given reasonable notice of such determination, so as to permit the preparation of adequate argument on all the issues to be argued.

§ 1002.346 Issuance of order.

The Secretary, upon the basis of the record, shall issue the final order in the proceeding. Such order shall rule upon the performance of the cooperative and either order the suspended payments to be paid to the cooperative, in whole or in part, or disqualify the cooperative and direct that the balance of payments held in reserve be returned to the producer-settlement fund.

§ 1002.347 Filing and service of order.

The order issued by the Secretary shall be filed with the Hearing Clerk who shall promptly serve copies thereof upon the cooperative association, the market administrator, the Director and the Solicitor.

§ 1002.348 Petition to reopen hearing; for rehearing; or for reconsideration of order.

(a) *Petition requisite*—(1) *Filing; service.* A petition to reopen the hearing to take further evidence, for good cause shown, or for rehearing or reargument, or for reconsideration of the order shall be made by petition filed with the Hearing Clerk, who immediately shall serve a copy thereof upon the other party to the proceeding. Every such petition shall state specifically the grounds relied upon.

(2) *Petition to reopen hearing.* A petition to reopen the hearing to take further evidence may be filed with the Hearing Clerk at any time prior to the issuance of the final order. If the petition is filed prior to the filing of the Presiding Officer's report it shall be referred to the Presiding Officer for decision but if filed later it shall be referred to the Secretary for decision.

(3) *Petition to rehear, reargue, or reconsider.* A petition to rehear or reargue, or to reconsider the final order, shall be filed with the Hearing Clerk within 20 days after the date of the service of such order and shall be referred to the Secretary for decision. Every such petition shall state specifically the matters claimed to have been erroneously decided, and alleged errors must be briefly stated.

(b) *Procedure for disposition of petitions.* Within ten days following the service of any petition provided for in this section, the other party to the proceeding may file an answer thereto with the Hearing Clerk. As soon as practicable thereafter, a ruling shall be issued granting or denying the petition. Unless the Secretary shall determine otherwise, the issuance or operation of the order shall be stayed pending the ruling on the petition.

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§ 1002.350 Filing of documents.

Except as provided otherwise in this subpart, all documents or papers required or authorized to be filed with the Hearing Clerk shall be filed in quintuplicate. Any document or paper required or authorized under this subpart to be filed with the Hearing Clerk shall be deemed to have been filed when it is received by the Hearing Clerk.

§ 1002.351 Service.

Documents required to be served by the Hearing Clerk upon a cooperative association shall be served by registered mail addressed to the cooperative association or to its attorney or agent of record at its or his last known principal place of business, office or residence, and service shall be complete on the date of such mailing.

§ 1002.352 Computation of time.

Saturdays, Sundays, and Federal holidays shall be included in computing the time allowed for filing of any document or paper: *Provided*, That, when such time expires on Saturday, Sunday, or a Federal holiday, such time shall be extended to include the next following business day.

§ 1002.353 Extensions of time.

The time for the filing of any documents or papers authorized in this subpart to be filed may be extended upon the request of any party (a) by the Presiding Officer before the transmittal of the record to the Secretary, or (b) by the Secretary at any time.

Subpart—Cooperative Payment Rules and Regulations Approval of Tentative Amendment

SOURCE: 34 FR 1764, Feb. 6, 1969, unless otherwise noted.

APPLICATION

§ 1002.400 Form of application.

Each applicant for cooperative payments pursuant to § 1002.89 shall submit an application to the market administrator, on forms or in the manner prescribed by the market administrator. Such application shall contain the following information:

(a) The name and address of the applicant and whether a cooperative or federation.

(b) The type of payments applied for.

(1) Marketwide services exclusive of the operation of marketing and processing facilities.

(2) Marketwide services including operation of marketing and processing facilities.

(c) A statement in the form of a resolution passed by the board of directors of applicant association stating its intention to perform the required marketwide services for which it is applying for payments.

(d) Such additional information as required by §§ 1002.401 through 1002.409.

§ 1002.401 Legal organization of applicant.

Each applicant shall submit the following information with respect to its organization:

(a) When, where, and under what laws it is incorporated.

(b) A copy of charter and bylaws, including all amendments thereto to date of application.

(c) The names and addresses of directors and officers.

§ 1002.402 Data for applicant cooperative.

An applicant cooperative shall submit the following information:

(a) A specimen copy of contract or other document denoting producer membership.

(b) The percentage of business with nonmembers during the most recent 12-month period.

(c) The number of members and, if there be more than one class of membership, the number of members in each class at the end of the preceding month.

(d) The names of pool plants and pool bulk tank units to which the members are delivering milk.

(e) The amount per hundredweight of milk received from members who are producers as defined in § 1002 6 and method of collection.

(f) The amount per hundredweight of milk received from any members who are not producers as defined in § 1002.6, if any.

(g) The name and business address of each of its affiliated cooperatives.

(h) The information required by § 1002.404 for each of its affiliated cooperatives.

(i) The name and address of each affiliated organization which is not an affiliated cooperative, as defined in § 1002.89(a)(4) and the nature of the affiliation, together with the method of reimbursement for services by either organization to the other.

§ 1002.403 Data for applicant federation.

An applicant federation shall submit the following information:

(a) The name and business address of each of its federated cooperatives.

(b) The information as required by § 1002.404 for each of its federated cooperatives.

(c) The name and address of each affiliated organization which is not a federated cooperative, as defined in § 1002.89(a)(3), and the nature of such affiliation, together with the method of reimbursement for services by either organization to the other.

§ 1002.404 Data for each affiliated or federated cooperative.

(a) When, where, and under what laws the cooperative is incorporated.

(b) The names and addresses of directors and officers of the cooperative.

(c) Copies of the charter, bylaws, and all amendments thereto to date of application, and a specimen of documents denoting producer membership in the cooperative.

(d) A copy of the contract(s) defining the relationship between the cooperative and the applicant.

(e) The amount per hundredweight of milk the cooperative receives from its members and method of collection.

(f) The percentage of business that the cooperative did with nonmembers during the most recent 12-month period.

(g) The number of members of the cooperative and, if there be more than one class membership, the number of members in each class at the end of the preceding month.

(h) The names and locations of the pool plants and pool bulk tank units to which the members of the cooperative are delivering milk.

(i) The amount per hundredweight received by applicant from the cooperative and the collection method used.

(j) The nature of any marketwide services to be performed by the cooperative on behalf of the applicant, the nature of control by applicant over such performance and the method of payment, if any, by the applicant for the performance of such services.

§ 1002.405 Operating facilities.

Each cooperative or federation which applies for payments on the basis of operating facilities shall report the following:

(a) The names and locations of pool plants and pool bulk tank units operated by applicant or its affiliated or federated cooperatives and the amount of milk handled by each for the most recent 12-month period.

(b) The name and location of each of the processing facilities controlled by applicant or its affiliated or federated cooperatives, the nature of the control exerted and the daily processing capacity of each. The basis for determination of claimed capacity shall be explained in detail.

(c) The amount of milk marketed by its member producers during the most recent 12-month period.

(d) The details of the arrangement whereby it stands willing to accept nonmember milk on a temporary basis.

§ 1002.406 Program of marketwide services.

Each applicant shall specify its proposed program, including its projected budget for the next fiscal year, for the performance with respect to:

(a) The marketwide services referred to in § 1002.89(e) (1) through (7).

(b) Any other services not included in (a), noting those on behalf of dairy farmers who are not member producers.

§ 1002.407 Personnel.

With respect to its ability to perform the marketwide services, each coopera-

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tive or federation shall supply the following information concerning personnel.

(a) A list of the names of personnel specified in § 1002.415(a) (1) through (4) and (b)(1) and a statement of the training and experience of each that will indicate the bases for his qualification to perform his duties.

(b) A statement of contemplated changes in personnel.

(c) A statement of the numbers of other personnel employed by applicant to carry out its program listed according to the type of job performed and whether full-time or part-time employment.

§ 1002.408 Control of utilization.

(a) Each applicant shall state how it is assured that it is in no way precluded, or how its affiliated or federated cooperatives are assured that they are not precluded, from arranging for the utilization of milk under their respective control so as to yield the highest available net return to all producers without displacing an equivalent quantity of producer milk in the preferred classifications.

(b) In the event that the applicant, or an affiliated or federated cooperative, has a contract with a handler for the disposition of milk, the applicant shall submit a copy of each such contract, or the pertinent parts of the contract, for the purpose of showing that applicant is able to comply with paragraph (b)(4) of § 1002.89.

§ 1002.409 Additional information.

(a) The market administrator may request of any applicant additional information if that contained in the application is insufficient to determine whether the applicant is qualified to receive payments.

(b) Prior to the issuance of a designation by the market administrator, an applicant may submit additional information which may be pertinent either because of the issuance of rules with respect to designation, or because of a change in the program of the applicant.

(c) In the event that an application has been filed under rules and regulations that have been superseded by these provisions, applicant will be required to submit all additional material specified in these provisions before its application will be considered complete.

DESIGNATION

§ 1002.410 Procedure.

(a) Each application shall be subject to investigation and verification prior to any determination as to the eligibility of the applicant to receive payments pursuant to § 1002.89.

(b) The notice of the designation of a cooperative or federation to receive payments shall indicate the applicable rate of payment and the name of each association included in the designation as an affiliated or federated cooperative.

(c) Each revision in the applicable rate of payment or in the list of affiliated or federated cooperatives shall be based upon a determination by the market administrator, except as provided in paragraph (d) of this section.

(d) An official notice from a designated cooperative or federation that its affiliation contract with an affiliated or federated cooperative has been terminated shall result in the automatic removal of such association from the list of affiliated or federated cooperatives included in the designation as of the effective date of contract termination.

(e) Before a negative determination on an application for designation is issued, the market administrator, or his representative, shall be available, on appointment, to meet with directors of the applicant association to discuss the material which would indicate the negative determination.

§ 1002.411 Determination as to whether an association of producers is a cooperative.

The determination as to whether an association of producers meets the definition of a cooperative specified in § 1002.89(a)(1) shall be made by the market administrator. For purposes of said definition, such an association shall be deemed qualified under the Capper-Volstead Act only if the Secretary has issued a determination indicating that the association is eligible to vote its membership en bloc in producer referenda relative to amending the orders.

§ 1002.412 Determination as to whether an applicant is a federation of cooperatives.

An applicant to be considered a federation of cooperatives must have a membership consisting of organizations incorporated under the cooperative corporations law of a State, and at least 90 percent of the member associations must be cooperatives as defined in § 1002.89(a)(1). The activities of the applicant must be under the control of its member associations; 75 percent of the voting power must be controlled by federated cooperatives or by federated cooperatives and other cooperatives qualified individually to receive payments under § 1002.89, and a negative vote by two-thirds of the federated cooperatives voting must be sufficient to veto any proposed action.

§ 1002.413 Producer membership in cooperatives.

(a) The claim of a cooperative that a producer is a member producer shall be supported by a document signed by the producer, or his authorized agent, except:

(1) Where the bylaws of the cooperative provide for the membership of a producer without signature where such producer refuses to sign on the basis of religious scruples; or

(2) Where the bylaws of an applicant cooperative provide for a class of membership or extension of membership to members of another association having such membership documents: *Provided*, That such arrangement does not subordinate the rights of any portion of the membership of the applicant association with respect to representation in the formulation of policy regarding performance of marketwide services for which payments are being made or applied for: *Provided further*, That a clear line of authority for the arrangement exists and the bylaws or producer contracts of the association having the membership documents expressly authorize such an arrangement, including extension of membership.

(b) A member producer must conform to all requirements of the bylaws or contracts of applicant association applicable to him as well as, where relevant, the affiliated or federated cooperative of which he is a member and the affiliated or federated cooperative of which he is a member must conform to all requirements of the bylaws or contracts of the applicant association applicable to it: *Provided*, That the failure of a cooperative to receive at least the requisite 1 cent per hundredweight amount from a claimed member producer shall be taken as evidence of nonconformance of such member to its bylaws.

(1) A member claimed by an undesignated cooperative must conform to all applicable requirements of the bylaws of the undesignated association if such membership is to be considered valid for purposes of the waiting period described in § 1002.89(a)(5)(iii): *Provided*, That the failure of an undesignated cooperative to receive dues from a claimed member shall be taken as evidence of nonconformance of such member to its bylaws.

(c) The determination of the market administrator as to whether two or more farms operated by one individual are one or more than one business unit shall resolve the question as to whether they are to be considered as operated by one or more than one producer.

(d) The market administrator shall consider the previously valid claim by an association that a dairy farmer is a member producer to have been invalidated for cooperative payments purposes if he finds any of the following conditions to prevail and shall notify the applicable association of such claim invalidation so that the cooperative may renew its claim if such renewal is appropriate:

(1) The dairy farmer ceases, for a 3-month period, to be a producer as defined in § 1002.6.

(2) The dairy farmer is found to be shipping to a nonpool plant unless he also continues to meet the conditions of § 1002.6.

(3) The dairy farmer ceases, for a 3-month period, to make the requisite payment of 1 cent per hundredweight of milk to the cooperative.

(4) The association has failed to respond in writing in the affirmative within 14 days to a written inquiry by

the market administrator, as to whether the producer is or is not a member.

(e) The determination as to whether an individual meets the definition of member producer shall be made by the market administrator. If an individual claimed by an association is found to be unable to meet the definition the cooperative shall be so notified.

§ 1002.414 Marketing and processing facilities.

(a) The rate of payment relating to operation of marketing facilities and control of processing facilities shall be based on a determination of the market administrator and any change in such rate shall be based only on his revised determination.

(b) In determining the percentage of milk received from member producers at pool plants or pool bulk tank units operated by the applicant and its affiliated or federated cooperatives, such percentage shall be computed on the basis of the most recent 12-month period.

(c) In determining the percentage of milk received from member producers capable of being handled at processing facilities controlled by applicant and its affiliated or federated cooperatives, such percentage shall be computed on the basis of the average total deliveries per day from member producers during the preceding May and June.

(d) Each determination of the handling capability of processing facilities shall be based only on the capacity of plants or other facilities located in the States of New York, New Jersey, or Pennsylvania, controlled by applicant or its affiliated or federated cooperatives and equipped to receive milk and thereafter manufacture it into such products as ice cream, ice cream mix, evaporated or condensed milk, nonfat dry milk solids, butter, and cheese. Such plant or facility shall be operated by designated cooperative or federation or its affiliated or federated cooperatives or else maintained by them at all times in such manner that full operation can be resumed within 7 days.

§ 1002.415 Personnel.

An applicant to be designated must employ at least the following personnel on a full-time basis, except as provided below with respect to lawyer: *Provided*, That the market administrator may waive the requirements with respect to formal education if he finds on the basis of evidence presented by the cooperative or federation that the employee has demonstrated in his other training and experience that he is qualified to occupy the position.

(a) *Supervisory personnel*—(1) *Economist.* A person who has a college degree, with additional training at least equivalent to that required for a master's degree with specialization in agricultural economics. The additional training may be either college training or experience acquired through working for a disinterested research agency, such as a governmental agency, or an endowed foundation. In addition, he must have at least 3 years of experience in the field of milk marketing.

(2) *Lawyer.* A lawyer who must be a member of the bar in good standing and who is employed by the applicant on a full-time or on a retainer basis. If employed on the latter basis, his retainer shall require that he give priority attention to the affairs of the cooperative or federation.

(3) *Field supervisor.* A person with education or experience equivalent to that of a person with a bachelor's degree with a major in agricultural marketing, dairy marketing or related subjects, and 5 years' experience in educational work among farmers, a part of which included the supervision of other persons engaged in such work.

(4) *Editor.* A person with education, training, or experience equivalent to that of a college degree in journalism or related subjects, and 5 years' experience in agricultural journalism.

(b) *Subordinate personnel*—(1) *Fieldman.* (i) A person with education equivalent to that of a person with a bachelor's degree, with a major in agricultural marketing, dairy marketing or related subjects, and 2 years' experience in educational work among farmers. Sufficient fieldmen must be employed on a full-time basis to meet the day-to-day problems of the cooperative or federation. Any additional fieldmen may be employed on a part-time basis to supplement the work of full-time fieldmen in carrying out the program of the cooperative with respect to producer education.

(ii) Persons with less education or experience than that required for fieldmen may be hired as assistant fieldmen and may qualify for fieldmen by participating in on-the-job training programs conducted by the cooperative or federation.

(2) *Other personnel.* A cooperative or federation must maintain a full-time staff of other employees sufficient to carry out the details of the program of marketwide services required by the order provisions.

§ 1002.416 Facilities.

The applicant must possess facilities which permit the personnel specified in § 1002.415 to operate efficiently.

§ 1002.417 Program for marketwide services.

(a) The program for marketwide services submitted by the applicant must be in sufficient detail to demonstrate that the program will result in the performance of the marketwide services required in the provisions of the order and the regulations with respect to performance.

(b) The proposed budget for financing the program must be presented in sufficient detail to permit evaluation as to whether fulfillment of the outlined services is feasible.

§ 1002.418 Publications.

(a) The applicant must issue an official publication containing milk marketing information for members and nonmembers.

(b) The issuance of a publication by an affiliated or federated cooperative shall be considered an activity of the cooperative or federation with which it is affiliated only to the extent that the material so published is prepared under the direction and supervision of the management of the cooperative or federation.

PERFORMANCE

§ 1002.420 Reports of cooperatives or federations.

(a) Each designated cooperative or federation shall file its annual report with the market administrator for its preceding fiscal year within 3 months of the close of its fiscal year. Such report shall include:

(1) A description of any changes which have occurred with respect to the information required pursuant to §§ 1002.401 through 1002.409 since the filing of its application for designation or its annual report for the preceding period.

(2) A complete financial report including its allocation of cooperative payments receipts to the various categories of expenditure for its performance of marketwide services enumerated in § 1002.421 as proposed for inclusion in the public report. The allocations shall be accompanied by detailed statements of the bases for its allocations to enable the market administrator to verify accuracy of the report.

(3) A narrative report which shall cover the complete activities of the association related to performance of the marketwide services and other provisions of the cooperative payments section of the order. The narrative shall follow the topic sequence of category allocations appearing in the financial report and bear comparable title identifications. Each category shall be summarized as proposed for issuance in the public report.

(4) A brief description of its proposed program of marketwide services for the following fiscal year, including its projected budget relative thereto. Emphasis is to be placed on any planned changes from the previous year.

(5) A copy of the public report it proposes to release. This shall be identified as "Proposed Public Report".

(b) Each designated cooperative or federation shall publish its public report of its performance of marketwide services for the preceding fiscal year in its official publication not later than the second regular issue following certification of such report by the market administrator and make copies available to him for distribution to interested persons upon request. The public report shall include:

(1) The amount of cooperative payments received.

(2) An allocation of cooperative payments receipts to the categories of expense indicated in § 1002.421 and a summary statement of its performance with regard to each category listed. The financial and narrative details shall be sufficiently informative to provide reasonable insight into the nature of its performance.

(3) A copy of the certification by the market administrator that the report is, to the best of his knowledge, accurate and in accordance with the rules and regulations issued by him.

(4) A list showing the name of each of its affiliated or federated cooperatives and the name and mailing address of the secretary of each such association.

(c) Each designated cooperative or federation shall file, or cause to be filed, the following reports and information with the market administrator, at the times indicated, for itself and each of its affiliated or federated cooperatives:

(1) A balance sheet and operating statement together with a complete statement on any distributions of cash, stock, or other apportionment of reserves to members, within 6 months of the close of the fiscal year.

(2) A notice of additions and withdrawals of members who are claimed as member producers not later than the end of the month following the month of such addition or withdrawal. No producer shall be considered a member producer of a cooperative or federation prior to the first of the month preceding the month in which the required report of the addition of such producer as a member is received by the market administrator.

(3) A notice of changes in directors or officers of the designated association or of its affiliated or federated cooperatives not later than the end of the month following the month in which the change became effective.

(4) Upon demand, such information as may be required by the Secretary for review of his determination of the eligibility of the cooperative to vote its membership en bloc in producer referenda relative to amending the orders.

(d) A designated cooperative or federation shall file with the market administrator a notice of the termination of any contract with one of its affiliated or federated cooperatives not later than the end of the month following the month of such termination. Such notice shall be required whether termination results from formal proceedings by either party or is due to de facto action such as merger, dissolution or inactive status of the affiliated or federated cooperative.

(e) At such times and in such manner as the market administrator may request, the cooperative or federation shall file additional reports with the market administrator.

§ 1002.421 Form of annual reports.

The following categories shall be used for the allocation of cooperative payments receipts to expenditures, of a direct or indirect nature, incurred in the performance of marketwide services and for the narrative reports on performance in the annual and public reports. Appropriate subdivisions should be used for maximum explanation with regard to performance of marketwide services.

(a) *Policy development.* This category shall include a statement of expenditures for and narrative relative to meetings or conferences of members, directors, delegates, employees and others for the development of policies and programs of the designated cooperative or federation for performance of marketwide services.

(b) *Market order programs.* This category shall include a statement of expenditures for and narrative relative to research, drafting, petitioning, hearing, briefing, referendum and other procedures whereby Federal or State market orders affecting producers under the orders are promulgated or amended.

(c) *Other Government-oriented activities.* This category shall include a statement of expenditures for and narrative relative to the preparation, development, and presentation of materials regarding other matters under the jurisdiction of public agencies that affect producers under the orders. This shall not include any activities covered in § 1002.421(b).

(d) *Informational services.* This category shall include a statement of expenditures for and narrative relative to meetings, publications, field activities, and other efforts to aid producers and others to become better informed concerning milk marketing problems and their solutions particularly as they affect the marketing of milk under the orders.

(e) *Maintenance of marketing and processing facilities.* This category shall include a statement of expenditures for and narrative relative to maintenance of such facilities.

(f) *Other marketwide services.* This category shall include a statement of expenditures for and narrative relative to performance of other services that are of benefit to all producers under the orders.

§ 1002.422 Verification of reports and receipts of milk from member producers.

(a) The reports required pursuant to § 1002.420 shall be subject to verification by the market administrator.

(b) Receipts of milk at pool plants and pool bulk tank units from member producers of a designated organization shall be subject to verification by the market administrator, and in the event that the volume of such receipts is different from that reported by the handler in its monthly report, the payment to the organization shall be adjusted accordingly by the market administrator by debiting or crediting the organization's account with the market administrator.

§ 1002.423 Consultation on milk marketing problems.

The association on reasonable notice shall make available its economist and other qualified personnel to consult with the market administrator, or his representative, with respect to milk marketing problems and their solutions, and the economist shall be prepared to discuss with the market administrator, or his representative, the progress being made by the association in carrying out research or analysis of marketing problems.

§ 1002.424 Formulation of proposed amendments and participation in hearings and meetings.

(a) Copies of all documents filed with respect to the items set forth below shall be filed with the market administrator at the same time as they are filed with the U.S. Department of Agriculture, the New York State Department of Agriculture and Markets, and the Division of Dairy Industry, New Jersey Department of Agriculture:

(1) Petitions for amendments.

(2) Briefs filed following hearings.

(3) Exceptions filed to recommended decisions.

(4) Written data, views, or arguments with respect to any rule-making procedure affecting the marketing orders.

(b) The records of amendment hearings and meetings with respect to rules and regulations shall be examined by the market administrator to determine the degree of participation by the cooperative or federation receiving cooperative payments.

§ 1002.425 Referendum of producers.

(a) The cooperative or federation shall assist the referendum agent in any referendum conducted with respect to proposed amendments to the orders particularly in distribution of referendum materials. Member producers of a designated cooperative or federation either must vote collectively on proposals, or else the designated cooperative or federation must conduct an intensive educational program for members and nonmembers for the guidance of the individual in voting.

§ 1002.426 Educational meetings.

(a) Each designated cooperative or federation shall hold a sufficient number of educational meetings open to both members and nonmembers so that at least one such meeting shall be held each year within 50 miles of each plant at which the milk of member producers of the cooperative or federation is delivered: *Provided,* That a meeting held jointly by more than one designated cooperative or federation may be considered by each as one of its own educational meetings only if each organization actively participates in the conduct of such meeting: *Provided further*, That the designated cooperative or federation may propose an alternative program of educational meetings that the market administrator may approve as a substitute means to insure that both members and nonmembers will be well informed for participation in the activities under the regulatory program.

(b) Notice of each such meeting shall be sent to the market administrator in sufficient time to permit the market administrator to have a representative present, if he so desires. The notice shall indicate the nature of participation by each designated participant in any joint meetings.

(c) The cooperative or federation shall report to the market administrator the means used by such cooperative or federation to notify nonmembers of such meetings.

§ 1002.427 Distribution of publications.

(a) The official publication of the cooperative or federation shall be issued at least once a month and distributed to all of its member producers and to nonmembers on the same subscription basis.

(b) One copy of the publication shall be filed with the market administrator.

§ 1002.428 Services performed by an affiliated or federated cooperative.

(a) A designated cooperative or federation may engage one or more of its affiliated or federated cooperatives to perform specific services: *Provided*, That the cooperative or federation shall exercise the same kind and degree of control over the performance of such services as it would if such services were being performed by its own personnel. The cooperative or federation may make payment to the affiliated or federated cooperative for the performance of such services, such payment for each category of activity to be either on the basis of a stipulated rate which shall be uniform with respect to all of its affiliated or federated cooperatives or in the form of reimbursement for actual expenditures. The opportunity to perform such services for the designated organization and to receive payment therefor shall be open to any of its affiliated or federated cooperatives which is equipped to perform the services. Performance of services by an affiliated or federated cooperative for the cooperative or federation on the basis herein described shall be considered as performance of the services by the cooperative or federation itself for the purpose of cooperative payments.

(b) With respect to those services for which cooperative payments are provided, activities of an affiliated or federated cooperative shall not be considered the activities of the cooperative or federation if the cooperative or federation does not exercise over them the same kind and degree of control as it would exercise over the activities of its own personnel and any payment by a cooperative or federation to an affiliated or federated cooperative with respect to such activities shall be considered contrary to the intent of the provisions of § 1002.83.

§ 1002.429 Receipts of money from members.

Any cooperative which makes patronage payments to its members which result in a net receipt from members of less than 1 cent per hundredweight of milk shall cause the members receiving such payments to fail to meet the definition of member producer unless such payments are applicable to an allocation or apportionment of reserves made for a period ending not less than 5 years prior to date of payment or were made to the estate of a bankrupt or deceased member.

PROCEDURES FOR CERTIFICATION OF PUBLIC REPORTS

§ 1002.430 Application for certification.

(a) The filing of a copy of the proposed public report by a designated cooperative or federation with the market administrator shall be deemed an application for certification of such report by him.

(b) Each application for certification by the market administrator shall be subject to investigation and verification prior to his issuance of any certification or refusal to certify.

§ 1002.431 Determination on certification.

(a) After a determination by the market administrator that he is willing to certify that the public report as proposed for publication is, to the best of his knowledge, accurate and in accordance with his rules and regulations, he shall mail a copy of his certification to the cooperative or federation.

(b) In the event that the market administrator determines that he cannot find a reasonable basis to certify that the public report as proposed is, to the best of his knowledge, accurate and in accordance with the rules and regulations issued by him, he shall set forth the reasons for such determination, mail a copy of the negative determination to the cooperative or federation, and commence proceedings immediately to remove the designation of applicant association.

(1) Twenty-one days prior to issuance of a negative determination on certification, the market administrator shall notify the designated association of his inability to certify, indicating the unacceptable portions of the report and specifying the tentative date for issuance of the negative determination in the event that a report acceptable for certification is not submitted in the interim.

(2) During aforesaid 21-day period the market administrator, or his representative, shall be available, on appointment, to meet with the directors of the designated association to discuss the materials which would indicate the negative determination.

HEARINGS ON PROPOSED REMOVAL OF DESIGNATION

§ 1002.440 Notice of hearing.

Not later than 10 days after receipt of a request for hearing on a proposed removal of designation, the market administrator shall issue a notice to the cooperative or federation of the time and place for such hearing.

§ 1002.441 Presiding officer.

The hearing shall be conducted by the market administrator, or at his discretion, by a hearing examiner of either the U.S. Department of Agriculture, the New York State Department of Agriculture and Markets, or the Division of Dairy Industry, New Jersey Department of Agriculture. If such hearing is conducted by a hearing examiner, his duties shall consist of conducting the hearing and certifying the record to the market administrator for decision.

§ 1002.442 Order of proceeding and burden of proof.

The cooperative or federation shall proceed first at the hearing and shall have the burden of proving its eligibility to receive payments.

§ 1002.443 Evidence.

(a) The cooperative or federation shall place into the record under oath or affirmation all of the evidence on which it will rely either before the market administrator or on an appeal.

(b) The market administrator shall be responsible for placing into the record under oath or affirmation any additional evidence on which he may wish to rely in making his final determination with respect to the qualification of the cooperative or federation to receive payments.

(c) Opportunity for cross-examination shall be given both to the cooperative or federation, and the market administrator.

§ 1002.444 Briefs.

A period of at least 5 days following the close of the hearing shall be permitted for the filing of a brief by the cooperative or federation.

Subpart—Determination and Public Announcement of Freight Zones

§ 1002.500 Freight zones.

Freight zones determined pursuant to § 1002.42 are as follows:

Plant locations	Freight zones
Accord, N.Y.	81-90
Adams, N.Y.	291-300
Adams Center, N.Y.	291-300
Addison, N.Y.	231-240
Afton, N.Y.	151-160
Akeley, Pa	361-370
Albany, N.Y.	131-140
Aldovin, Pa	141-150
Alfred, N.Y.	281-290

Plant locations	Freight zones
Allamuchy, N.J	41-50
Allendale N.J	11-20
Allentown, Pa	76-80
Allenwood, N.J	41-50
Altamont, N.Y	141-150
Altmar, N.Y	261-270
Amenia, N.Y	76-80
Amsterdam, N.Y	161-170
Ancramdale, N.Y	91-100
Andes, N.Y	131-140
Andover, N.J	31-40
Andover, N.Y	271-275
Antwerp, N.Y	291-300
Apulia, N.Y	211-220
Arcade, N.Y	326-330
Arkport, N.Y	276-280
Asbury Park, N.J	41-50
Auburn, N.Y	231-240
Au Sable Forks, N.Y	276-280
Avoca, N.Y	251-260
Bainbridge, N.Y	161-170
Baldwinsville, N.Y	241-250
Ballston Lake, N.Y	151-160
Ballston Spa, N.Y	161-170
Baptistown, N.J	41-50
Barneveld, N.Y	211-220
Bath, N.Y	241-250
Beacon, N.Y	41-50
Bear Lake, Pa	381-390
Beaver Springs, Pa	191-200
Belfast, N.Y	301-310
Bellefonte, Pa	221-225
Belle Mead, N.J	31-40
Belmar, N.J	41-50
Belmont, N.Y	291-300
Belvidere, N.J	51-60
Bennington, Vt	161-170
Benton, Pa	141-150
Berkshire, N.Y	181-190
Bernardsville, N.J	41-50
Billings, N.Y	61-70
Binghamton, N.Y	151-160
Bingley, N.Y	221-225
Black River, N.Y	281-290
Blairstown, N.J	51-60
Bloomingburg, N.Y	61-70
Bloomingdale, N.Y	291-300
Blooming Grove, N.Y	41-50
Bloomington, N.Y	81-90
Bloomville, N.Y	151-160
Blossvale, N.Y	241-250
Boiling Springs, Pa	171-175
Bombay, N.Y	341-350
Boonville, N.Y	231-240
Bouckville, N.Y	201-210
Bound Brook, N.J	11-20
Bovina Center, N.Y	141-150
Branchville, N.J	41-50
Brandon, Vt	241-250
Bridgewater, N.Y	201-210
Brier Hill, N.Y	326-330
Broadalbin, N.Y	171-175
Broadway, N.J	51-60
Brooktondale, N.Y	191-200
Bullville, N.Y	61-70
Burke, N.Y	341-350
Burlington, N.J	51-60
Burnside, N.Y	41-50
Burnt Hills, N.Y	151-160
Buskirk, N.Y	161-170
Butztown, Pa	61-70
Califon, N.J	31-40

Plant locations	Freight zones
Callicoon, N.Y	91-100
Cambridge, N.Y	171-175
Camden, N.Y	241-250
Camillus, N.Y	231-240
Campbell, N.Y	231-240
Canaan, N.Y	121-125
Canajoharie, N.Y	171-175
Canastota, N.Y	226-230
Candor, N.Y	181-190
Canisteo, N.Y	261-270
Cannonsville, N.Y	131-140
Canoe Camp, Pa	211-220
Canton, N.Y	326-330
Canton, Pa	201-210
Cape Vincent, N.Y	311-320
Castleton-on-Hudson, N.Y	111-120
Castorland, N.Y	261-270
Cato, N.Y	241-250
Catskill, N.Y	101-110
Cazenovia, N.Y	211-220
Center Lisle, N.Y	176-180
Centerville, Md	176-180
Centerville, Pa	381-390
Central Bridge, N.Y	151-160
Central Square, N.Y	241-250
Champlain, N.Y	311-320
Charlotte, Vt	261-270
Charlton, N.Y	151-160
Chateaugay, N.Y	331-340
Chatham, N.J	1-10
Chatham, N.Y	111-120
Chaumont, N.Y	301-310
Cherry Valley, N.Y	171-175
Chester, N.J	26-30
Chittenango Station, N.Y	226-230
Christiana, Pa	121-125
Churubusco, N.Y	341-350
Cincinnatus, N.Y	181-190
Circleville, N.Y	61-70
Clarksville, N.Y	141-150
Cleona, Pa	141-150
Clifford, Pa	111-120
Clifton, N.J	1-10
Climax, N.Y	111-120
Clinton, N.Y	221-225
Clyde, N.Y	261-270
Cobleskill, N.Y	151-160
Cochecton, N.Y	91-100
Cohocton, N.Y	261-270
Cohoes, N.Y	131-140
Cokesbury, N.J	41-50
Colonie, N.Y	131-140
Columbia, N.Y	191-200
Columbia Cross Roads, Pa	201-210
Conklin, N.Y	141-150
Convent, N.J	11-20
Cooperstown, N.Y	181-190
Copake, N.Y	91-100
Copenhagen, N.Y	271-275
Corinth, N.Y	176-180
Corning, N.Y	226-230
Corry, Pa	381-390
Cortland, N.Y	191-200
Coventry, N.Y	151-160
Coxsackie, N.Y	111-120
Cresskill, N.J	1-10
Croghan, N.Y	271-275
Crown Point, N.Y	231-240
Cuba, N.Y	301-310
Danbury, Conn	41-50
Davenport Center, N.Y	151-160
Deansboro, N.Y	211-220

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Plant locations	Freight zones
Deer River, N.Y	271-275
De Kalb Junction, N.Y	321-325
Delaware, N.J	51-60
Delhi, N.Y	141-150
Delmar, N.Y	131-140
Deposit, N.Y	131-140
De Witt, N.Y	231-240
Dolgeville, N.Y	191-200
Douglas Crossing, N.Y	301-310
Dover, Delaware	141-150
Dover, N.J	21-25
Downsville, N.Y	131-140
Dryden, N.Y	191-200
Dundee, N.Y	231-240
Durhamville, N.Y	226-230
Dushore, Pa	161-170
Eagle Mills, N.Y	141-150
East Freetown, N.Y	181-190
East Greenbush, N.Y	126-130
East Smithfield, Pa	191-200
East Syracuse, N.Y	231-240
East Worcester, N.Y	161-170
Easton, Pa	51-60
Eaton, N.Y	211-220
Edmeston, N.Y	181-190
Edwards, N.Y	301-310
Elizabethville, Pa	151-160
Elkland, Pa	241-250
Ellenburg, N.Y	331-340
Ellenburg Center, N.Y	331-340
Ellenville, N.Y	76-80
Ellicottville, N.Y	341-350
Elliotsburg, Pa	181-190
Elmira, N.Y	211-220
Elnora, N.Y	151-160
Elton, N.Y	331-340
Endicott, N.Y	161-170
Englishtown, N.J	31-40
Essex, N.Y	261-270
Evans Mills, N.Y	291-300
Fairdale, Pa	141-150
Fair Haven, Vt	201-210
Fairlawn, N.J	1-10
Farmingdale, N.J	31-40
Fayetteville, N.Y	226-230
Ferndale, N.Y	81-90
Fillmore, N.Y	311-320
Flemington, N.J	31-40
Florence, Vt	231-240
Fly Creek, N.Y	191-200
Fort Ann, N.Y	191-200
Fort Covington, N.Y	341-350
Fort Edward, N.Y	176-180
Fort Hunter, N.Y	161-170
Fort Plain, N.Y	176-180
Foster, Pa	131-140
Frankfort, N.Y	201-210
Franklin, N.Y	161-170
Franklin Lakes, N.J	11-20
Franklindale, Pa	181-190
Franklinville, N.Y	326-330
Fraser, N.Y	151-160
Freehold, N.J	31-40
Frenchtown, N.J	51-60
Frewsburg, N.Y	371-375
Fulton, N.Y	251-260
Fultonville, N.Y	171-175
Galeton, Pa	251-260
Gardiner, N.Y	61-70
Garfield, N.J	1-10
Geneva, N.Y	251-260
Georgetown, N.Y	201-210
Gillette, N.J	11-20
Glenfield, N.Y	251-260
Glenmont, N.Y	131-140
Glens Falls, N.Y	181-190
Gloversville, N.Y	176-180
Gorham, N.Y	261-270
Goshen, N.Y	41-50
Gouverneur, N.Y	301-310
Gracie, N.Y	201-210
Grand Gorge, N.Y	131-140
Granville, N.Y	191-200
Graybills, Pa	161-170
Great Barrington, Mass	111-120
Great Bend, Pa	131-140
Greencastle, Pa	211-220
Greene, N.Y	161-170
Greenfield Center, N.Y	161-170
Greenwich, N.Y	171-175
Groton, N.Y	201-210
Groveland, N.Y	281-290
Grover, Pa	201-210
Guilford, N.Y	161-170
Hagaman, N.Y	161-170
Hague, N.Y	211-220
Halcott Center, N.Y	121-125
Halcottville, N.Y	131-140
Hamburg, N.J	31-40
Hamden, N.Y	151-160
Hamilton, N.Y	201-210
Hammond, N.Y	311-320
Hammondsport, N.Y	251-260
Hancock, N.Y	121-125
Hankins, N.Y	101-110
Hannibal, N.Y	251-260
Hanover, N.J	11-20
Hanover, Pa	176-180
Harpursville, N.Y	141-150
Harkness, N.Y	281-290
Hartwick, N.Y	181-190
Hasbrouck Heights, N.J	1-10
Herkimer, N.Y	191-200
Heuvelton, N.Y	326-330
Highland Mills, N.Y	31-40
Hightstown, N.J	31-40
Hillsdale, N.Y	101-110
Hillside, N.J	1-10
Himrod, N.Y	231-240
Hobart, N.Y	141-150
Hogansburg, N.Y	351-360
Holland Patent, N.Y	221-225
Homer, N.Y	191-200
Honesdale, Pa	91-100
Honey Brook, Pa	111-120
Hossick Falls, N.Y	161-170
Hornell, N.Y	271-275
Horseheads, N.Y	211-220
Houghton, N.Y	301-310
Howard, Pa	226-230
Hubbardsville, N.Y	201-210
Hudson, N.Y	101-110
Hudson Falls, N.Y	181-190
Ilion, N.Y	201-210
Indian Castle, N.Y	181-190
Interlaken, N.Y	221-225
Irona, N.Y	321-325
Iselin, N.J	1-10
Ithaca, N.Y	201-210
Jamesburg, N.J	26-30
Jay, N.Y	271-275
Jeffersonville, N.Y	101-110
Johnson, N.Y	51-60
Johnsonburg, N.J	41-50

Plant locations	Freight zones
Johnson City, N.Y	151-160
Johnstown, N.Y	171-175
Keeseville, N.Y	281-290
Kenwood, N.Y	211-220
Kinderhook, N.Y	111-120
Kingsley, Pa	126-130
Kingston, N.Y	76-80
Kirkwood, N.Y	141-150
Kortright Station, N.Y	141-150
Kyserike, N.Y	81-90
Laceyville, Pa	151-160
Lacona, N.Y	281-290
La Fargeville, N.Y	301-310
Lafayette, N.J	31-40
Lake Katrine, N.Y	81-90
Lake Luzerne, N.Y	181-190
Lake Placid, N.Y	276-280
Lakeville, N.Y	291-300
Lakewood, N.J	41-50
Lakewood, Pa	121-125
Lambertville, N.J	51-60
Lancaster, Pa	131-140
Latham, N.Y	131-140
Lawrenceville, Pa	231-240
Lebanon, N.J	31-40
Lebanon, N.Y	201-210
Lebanon, Pa	131-140
Leon, N.Y	361-370
Leonardsville, N.Y	191-200
Le Raysville, Pa	161-170
Lewisburg, N.J	41-50
Lewisburg, Pa	171-175
Lexington, N.Y	111-120
Liberty, N.Y	91-100
Liberty, Pa	211-220
Liberty Corner, N.J	21-25
Limerick, N.Y	291-300
Lincoln, Pa	131-140
Linden, N.J	1-10
Lindley, N.Y	231-240
Lisbon, N.Y	331-340
Lisle, N.Y	171-175
Little Falls, N.Y	191-200
Little Valley, N.Y	341-350
Little York, N.Y	201-210
Littlestown, Pa	181-190
Liverpool, N.Y	231-240
Livingston, N.J	1-10
Loch Arbour, N.J	41-50
Locke, N.Y	211-220
Long Branch, N.J	31-40
Long Bridge, N.J	41-50
Long Valley, N.J	31-40
Lookout, Pa	111-120
Loudonville, N.Y	131-140
Lowville, N.Y	261-270
Lycoming, N.Y	271-275
Lyons Falls, N.Y	241-250
MacDougall, N.Y	241-250
Madrid, N.Y	341-350
Malden-on-Hudson, N.Y	91-100
Mallory, N.Y	251-260
Malone, N.Y	331-340
Manasquan, N.J	41-50
Manchester Depot, Vt	191-200
Manlius, N.Y	226-230
Manorkill, N.Y	131-140
Mansfield, Pa	211-220
Manville, N.J	21-25
Marathon, N.Y	181-190
Marcellus, N.Y	231-240
Margaretville, N.Y	126-130

Plant locations	Freight zones
Marlboro, N.J	26-30
Marshall, N.Y	211-220
Martville, N.Y	251-260
Massena Springs, N.Y	351-360
Matamoras, Pa	51-60
Maybury Mills, N.Y	191-200
Mayfield, N.Y	176-180
Mayville, N.Y	391-400
Mechanicville, N.Y	151-160
Mehoopany, Pa	141-150
Menands, N.Y	131-140
Mendham, N.J	21-25
Meshoppen, Pa	141-150
Metuchen, N.J	11-20
Mexico, N.Y	261-270
Middlebush, N.J	21-25
Middleburg, N.Y	141-150
Middleburg, Pa	181-190
Middlebury, Vt	241-250
Middlebury Center, Pa	231-240
Middletown, N.Y	51-60
Middletown Springs, Vt	211-220
Middleville, N.Y	201-210
Middle Grove, N.Y	161-170
Midland Park, N.J	11-20
Mifflinburg, Pa	181-190
Mifflintown, Pa	201-210
Milanville, Pa	91-100
Milford, N.Y	176-180
Millerstown, Pa	181-190
Millerton, N.Y	81-90
Mill Hall, Pa	211-220
Millport, Pa	291-300
Milton, Pa	161-170
Minetto, N.Y	261-270
Minoa, N.Y	231-240
Mohawk, N.Y	191-200
Moira, N.Y	331-340
Montgomery, N.Y	61-70
Monticello, N.Y	76-80
Montour Falls, N.Y	211-220
Montrose, Pa	141-150
Montvale, N.J	11-20
Moravia, N.Y	211-220
Moriah, N.Y	241-250
Moriah Center, N.Y	241-250
Morristown, N.J	11-20
Morrisville, N.Y	211-220
Mount Joy, Pa	141-150
Mount Kisco, N.Y	21-25
Mount Upton, N.Y	161-170
Mount Vernon, N.Y	1-10
Munnsville, N.Y	211-220
Myerstown, Pa	131-140
Nanuet, N.Y	11-20
Natural Bridge, N.Y	281-290
Neptune, N.J	41-50
Netcong, N.J	26-30
New Albany, Pa	176-180
Newark, N.J	1-10
Newark Valley, N.Y	176-180
New Berlin, N.Y	181-190
New Brunswick, N.J	11-20
Newburgh, N.Y	41-50
New City, N.Y	11-20
Newfoundland, N.J	21-25
Newfoundland, Pa	91-100
New Hartford, N.Y	211-220
New Haven Jct., Vt	251-260
New Holland, Pa	126-130
New Kingston, N.Y	131-140
New Lebanon, N.Y	131-140

Plant locations	Freight zones
New Market, N.J	11-20
New Milford, Pa	131-140
New Paltz, N.Y	61-70
Newport, N.Y	201-210
Newton, N.J	41-50
New Woodstock, N.Y	211-220
New York Mills, N.Y	211-220
Nichols, N.Y	181-190
Nicholson, Pa	131-140
Niskayuna, N.Y	141-150
Norfolk, N.Y	341-350
North Bennington, Vt	171-175
North Bergen, N.J	1-10
North Bangor, N.Y	331-340
North Chatham, N.Y	111-120
North Haledon, N.J	1-10
North Harford, N.Y	191-200
North Lawrence, N.Y	341-350
North Orwell, Pa	181-190
North Tarrytown, N.Y	11-20
North Winfield, N.Y	201-210
Norwich, N.Y	176-180
Nunda, N.Y	291-300
Nutley, N.J	1-10
Oakhurst, N.J	31-40
Ogdensburg, N.Y	331-340
Oliver Crossing, N.Y	251-260
Onativia, N.Y	221-225
Oneida, N.Y	221-225
Oneonta, N.Y	161-170
Oquaga, N.Y	141-150
Oriskany Falls, N.Y	211-220
Osceola, Pa	241-250
Oswego, N.Y	261-270
Otego, N.Y	171-175
Otisville, N.Y	61-70
Owego, N.Y	171-175
Oxford, N.J	51-60
Oxford, N.Y	171-175
Oxford Depot, N.Y	41-50
Painted Post, N.Y	226-230
Palmer, N.Y	176-180
Parsippany, N.J	11-20
Passaic, N.J	1-10
Paterson, N.J	1-10
Pattersonville, N.Y	151-160
Pawling, N.Y	51-60
Peekskill, N.Y	26-30
Penn Yan, N.Y	241-250
Perth Amboy, N.J	11-20
Perry, N.Y	301-310
Peru, N.Y	281-290
Peruton, N.Y	201-210
Petersburg, N.Y	151-160
Philadelphia, N.Y	291-300
Philipsburg, N.J	51-60
Philmont, N.Y	101-110
Phoenix, N.Y	241-250
Pierrepont Manor, N.Y	281-290
Pine Brook, N.J	1-10
Pine Bush, N.Y	61-70
Pine City, N.Y	211-220
Pine Hill, N.Y	111-120
Pine Plains, N.Y	81-90
Plainfield, N.J	11-20
Plainsboro, N.J	31-40
Plattsburg, N.Y	291-300
Pleasant Mount, Pa	101-110
Pleasant Valley, N.J	61-70
Pleasantville, N.Y	11-20
Point Pleasant, N.J	41-50
Poland, N.Y	201-210

Plant locations	Freight zones
Port Allegany, Pa	291-300
Port Chester, N.Y	11-20
Port Crane, N.Y	161-170
Port Jervis, N.Y	51-60
Portlandville, N.Y	171-175
Port Murray, N.J	41-50
Port Royal, Pa	201-210
Portville, N.Y	301-310
Potsdam, N.Y	331-340
Poughkeepsie, N.Y	51-60
Prattsburg, N.Y	261-270
Prattsville, N.Y	126-130
Preakness, N.J	1-10
Preble, N.Y	201-210
Prices Switch, N.J	41-50
Prospect Park, N.J	1-10
Pulaski, N.Y	271-275
Putnam Station, N.Y	211-220
Queensbury, N.Y	181-190
Randolph, N.Y	351-360
Raritan, N.J	21-25
Ravena, N.Y	121-125
Ray Brook, N.Y	281-290
Red Bank, N.J	31-40
Red Hook, N.Y	81-90
Remsen, N.Y	221-225
Rensselaer, N.Y	131-140
Rhinebeck, N.Y	76-80
Richfield Springs, N.Y	181-190
Richmondville, N.Y	151-160
Ridgewood, N.J	1-10
Riverside, N.J	61-70
Rochelle Park, N.J	1-10
Rockaway, N.J	11-20
Rockdale, N.Y	161-170
Rock Royal, N.Y	141-150
Rock Springs, Pa	241-250
Rome, N.Y	226-230
Roscoe, N.Y	101-110
Roseland, N.J	1-10
Rosendale, N.Y	76-80
Roseville, Pa	211-220
Roxbury, N.Y	131-140
Rushville, Pa	151-160
Rutland, Vt	221-225
St. Johnsville, N.Y	181-190
Salisbury, Vt	241-250
Salisbury Center, N.Y	191-200
Saratoga Springs, N.Y	161-170
Saugerties, N.Y	81-90
Sauquoit, N.Y	211-220
Sayre, Pa	191-200
Schenectady, N.Y	141-150
Schenevus, N.Y	161-170
Schoharie, N.Y	141-150
Schuylerville, N.Y	161-170
Scotia, N.Y	141-150
Seeley Creek, N.Y	210-220
Seward, N.Y	161-170
Sharon Springs, N.Y	161-170
Sheds Corners, N.Y	201-210
Sherburne, N.Y	181-190
Sherburne-4 Corners, N.Y	181-190
Sherrill, N.Y	221-225
Shrewsbury, N.J	31-40
Sidney, N.Y	151-160
Signac, N.J	1-10
Sinclairville, N.Y	371-375
Skaneateles, N.Y	226-230
Skaneateles Junction, N.Y	231-240
Skinners Eddy, Pa	151-160
Slate Hill, N.Y	51-60

Plant locations	Freight zones
Smithboro, N.Y	181-190
Smiths Basin, N.Y	181-190
Smithville Flats, N.Y	171-175
Smyrna, N.Y	191-200
Solsville, N.Y	211-220
Somerville, N.J	21-25
South Columbia, N.Y	191-200
South Dayton, N.Y	361-370
South Glens Falls, N.Y	181-190
South Kortright, N.Y	141-150
South Montrose, Pa	141-150
South New Berlin, N.Y	171-175
South Waverly, Pa	191-200
Spencer, N.Y	191-200
Springdale, N.J	31-40
Spring Lake, N.J	41-50
Spring Mills, Pa	211-220
Spring Valley, N.Y	11-20
Springville, Pa	141-150
Stamford, N.Y	131-140
Starrucca, Pa	126-130
State Bridge, N.Y	226-230
Steamburg, N.Y	341-350
Stephentown, N.Y	131-140
Stewart Station, N.Y	41-50
Stillwater, N.J	51-60
Stillwater, N.Y. (Chenango County)	161-170
Stillwater, N.Y. (Saratoga County)	151-160
Stuyvesant Falls, N.Y	101-110
Suffern, N.Y	11-20
Sugar Grove, Pa	371-375
Summit, N.J	1-10
Sussex, N.J	41-50
Syracuse, N.Y	231-240
Theresa, N.Y	301-310
Thompson, Pa	121-125
Three Bridges, N.J	31-40
Throop, N.Y	231-240
Ticonderoga, N.Y	226-230
Tioga, Pa	226-230
Toms River, N.J	51-60
Towanda, Pa	176-180
Tranquility, N.J	31-40
Trenton, N.J	41-50
Troy, N.Y	131-140
Troy, Pa	191-200
Trumansburg, N.Y	211-220
Truxton, N.Y	201-210
Tuckerton, Pa	101-110
Tully, N.Y	211-220
Tunkhannock, Pa	131-140
Tylerville, N.Y	281-290
Ulster, Pa	181-190
Unadilla, N.Y	161-170
Union, N.J	1-10
Union City, N.J	1-10
Union City, Pa	391-400
Unionville, N.Y	41-50
Upper Saddle River, N.J	11-20
Utica, N.Y	211-220
Vail, N.J	51-60
Van Hornesville, N.Y	181-190
Vergennes, Vt	251-260
Vernon, N.Y	226-230
Vernon Center, N.Y	226-230
Waddington, N.Y	341-350
Wadhams, N.Y	251-260
Wallace, N.Y	251-260
Walton, N.Y	141-150
Warwick, N.Y	41-50
Washington, N.J	41-50
Washingtonville, N.Y	41-50
Waterford, N.Y	141-150
Watertown, N.Y	281-290
Waterville, N.Y	211-220
Watervliet, N.Y	131-140
Watkins Glen, N.Y	211-220
Waverly, N.Y	191-200
Wayland, N.Y	271-275
Websters Crossing, N.Y	281-290
Weedsport, N.Y	241-250
Wellsboro, Pa	231-240
Wellsbridge, N.Y	161-170
Wellsburg, N.Y	201-210
Wellsville, N.Y	281-290
West Burlington, Pa	191-200
West Chazy, N.Y	301-310
West Coxsackie, N.Y	111-120
West Edmeston, N.Y	191-200
West Harpersfield, N.Y	141-150
West Lee, N.Y	231-240
West Leyden, N.Y	241-250
West Nyack, N.Y	11-20
West Pawlett, N.Y	191-200
West Valley, N.Y	351-360
West Warren, Pa	171-175
West Winfield, N.Y	191-200
Westfield, Pa	251-260
Westminster, Md	201-210
Westmoreland, N.Y	221-225
Westport, N.Y	251-260
Whallonsburg, N.Y	251-260
Whippany, N.J	11-20
Whitehall, N.Y	201-210
Whitehouse, N.J	31-40
Whitesboro, N.Y	211-220
Whitesville, N.Y	271-275
White Plains, N.Y	11-20
Whiting, Vt	231-240
Whitney Point, N.Y	171-175
Williamstown, N.Y	251-260
Willseyville, N.Y	191-200
Windham, N.Y	111-120
Windsor, N.Y	131-140
Winthrop, N.Y	341-350
Wolcott, N.Y	261-270
Woodbridge, N.J	1-10
Woods Corners, N.Y	181-190
Worcester, N.Y	161-170
Wyalusing, Pa	161-170
Wynantskill, N.Y	141-150
Wyckoff, N.J	11-20
Wysox, Pa	171-175
Youngs Crossing, N.Y	201-210
Youngsville, N.Y	101-110

[22 FR 6040, Aug. 1, 1957. Redesignated at 26 FR 12752, Dec. 30, 1961]

§ 1002.501 Zones for minor civil divisions.

Zones for minor civil divisions determined pursuant to § 1002.42(b) are as follows: (Where not otherwise specified, incorporated villages are in the same zone as the township in which they are located.)

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MINOR CIVIL DIVISIONS IN THE STATE OF NEW JERSEY

	Freight zone (miles)
ATLANTIC COUNTY	
Absecon city	101-110
Atlantic City	101-110
Brigantine city	101-110
Buena borough	81-90
Buena Vista township	81-90
Corbin City	101-110
Egg Harbor City	81-90
Egg Harbor township	101-110
Estell Manor city	101-110
Folsom borough	81-90
Galloway township	81-90
Hamilton township	81-90
Hammontown town	76-80
Linwood city	101-110
Longport borough	111-120
Margate City	101-110
Mullica township	76-80
Northfield city	101-110
Pleasantville city	101-110
Port Republic city	81-90
Somers Point city	101-110
Ventnor City	101-110
Weymouth township	91-100
BERGEN COUNTY	
Allendale borough	11-20
Mahwah township	11-20
Montvale borough	11-20
Oakland borough	11-20
Ramsey borough	11-20
Saddle River borough	11-20
Upper Saddle River borough	11-20
Waldwick borough	11-20
All other minor civil divisions	1-10
BURLINGTON COUNTY	
Bass River township	71-75
Beverly city	51-60
Bordentown city	41-50
Bordentown township	41-50
Burlington city	51-60
Burlington township	51-60
Chesterfield township	41-50
Cinnaminson township	61-70
Delanco township	51-60
Delran township	61-70
Eastampton township	51-60
Edgewater Park township	51-60
Evesham township	61-70
Fieldsboro borough	41-50
Florence township	41-50
Hainesport township	51-60
Levittown township	51-60
Lumberton township	51-60
Mansfield township	41-50
Maple Shade township	61-70
Medford township	61-70
Medford Lakes borough	61-70
Moorestown township	61-70
Mount Holly township	51-60
Mount Laurel township	61-70
New Hanover township	51-60
North Hanover township	41-50
Palmyra borough	61-70
Pemberton borough	51-60
Pemberton township	51-60
Riverside township	61-70
Riverton borough	61-70
Shamong township	61-70
Southampton township	51-60
Springfield township	51-60
Tabernacle township	61-70
Washington township	71-75
Westampton township	51-60
Woodland township	61-70
Wrightstown borough	51-60
CAMDEN COUNTY	
Audubon borough	61-70
Audubon Park borough	61-70
Barrington borough	61-70
Bellmawr borough	71-75
Berlin borough	76-80
Berlin township	76-80
Brooklawn borough	71-75
Camden city	61-70
Chesilhurst borough	76-80
Clementon borough	76-80
Collingswood borough	61-70
Delaware township	61-70
Gibbsboro borough	71-75
Gloucester City	61-70
Gloucester township	71-75
Haddon township	61-70
Haddonfield borough	61-70
Haddon Heights borough	61-70
Hi-Nella borough	71-75
Laurel Springs borough	71-75
Lawnside borough	61-70
Lindenwold borough	71-75
Magnolia borough	71-75
Merchantville borough	61-70
Mount Ephraim borough	61-70
Oaklyn borough	61-70
Pennsauken township	61-70
Pine Hill borough	76-80
Pine Valley borough	76-80
Runnemede borough	71-75
Somerdale borough	71-75
Stratford borough	71-75
Tavistock borough	61-70
Voorhees township	71-75
Waterford township	76-80
Winslow township	76-80
Wood-Lynne borough	61-70
CAPE MAY COUNTY	
Avalon borough	126-130
Cape May city	141-150
Cape May Point borough	141-150
Dennis township	111-120
Lower township	131-140
Middle township	121-125
North Wildwood city	131-140
Ocean City	111-120
Sea Isle City	126-130
Stone Harbor borough	131-140
Upper township	111-120
West Cape May borough	141-150
West Wildwood borough	131-140
Wildwood city	131-140
Wildwood Crest borough	131-140
Woodbine borough	111-120
CUMBERLAND COUNTY	
Bridgeton city	111-120
Commercial township	111-120
Deerfield township	101-110

MINOR CIVIL DIVISIONS IN THE STATE OF NEW JERSEY—Continued

	Freight zone (miles)
Downe township	111-120
Fairfield township	111-120
Greenwich township	111-120
Hopewell township	91-100
Lawrence township	111-120
Maurice River township	101-110
Millville city	101-110
Shiloh borough	101-110
Stow Creek township	101-110
Upper Deerfield township	91-100
Vineland city	91-100
ESSEX COUNTY	
All minor civil divisions	1-10
GLOUCESTER COUNTY	
Clayton borough	81-90
Deptford township	71-75
East Greenwich township	76-80
Elk township	81-90
Franklin township	81-90
Glassboro borough	81-90
Greenwich township	76-80
Harrison township	81-90
Logan township	81-90
Mantua township	76-80
Monroe township	81-90
National Park borough	71-75
Newfield borough	91-100
Paulsboro borough	76-80
Pitman borough	81-90
South Harrison township	81-90
Swedesboro borough	81-90
Washington township	76-80
Wenonah borough	76-80
West Deptford township	71-75
Westville borough	71-75
Woodbury city	71-75
Woodbury Heights borough	71-75
Woolwich township	81-90
HUDSON COUNTY	
All minor civil divisions	1-10
HUNTERDON COUNTY	
Alexandria township	41-50
Bethlehem township	41-50
Bloomsbury borough	41-50
Califon borough	31-40
Clinton town	31-40
Clintown township	31-40
Delaware township	41-5
East Amwell township	31-40
Flemington borough	31-40
Franklin township	31-40
Frenchtown borough	41-50
Glen Bardner borough	41-50
Hampton borough	41-50
High Bridge borough	31-40
Holland township	41-50
Kingwood township	41-50
Lambertville city	41-50
Lebanon borough	31-40
Lebanon township	31-40
Milford borough	41-50
Raritan township	31-40
Readington township	26-30
Stockton borough	41-50
Tewksbury township	26-30
Union township	31-40

MINOR CIVIL DIVISIONS IN THE STATE OF NEW JERSEY—Continued

	Freight zone (miles)
West Amwell township	41-50
MERCER COUNTY	
East Windsor township	31-40
Ewing township	41-50
Hamilton township	31-40
Highstown borough	31-40
Hopewell borough	31-40
Hopewell township	31-40
Lawrence township	31-40
Pennington borough	31-40
Princeton borough	26-30
Princeton township	26-30
Trenton city	41-50
Washington township	31-40
West Windsor township	31-40
MIDDLESEX COUNTY	
Carteret borough	1-10
Cranbury township	26-30
Dunellen borough	11-20
East Brunswick township	11-20
Edison township	1-10
Helmetta borough	21-25
Highland Park borough	11-20
Jamesburg borough	21-25
Madison township	11-20
Metuchen borough	1-10
Middlesex borough	11-20
Milltown borough	11-20
Monroe township	21-25
New Brunswick city	11-20
North Brunswick township	11-20
Perth Amboy city	1-10
Piscataway township	11-20
Plainsboro township	26-30
Sayreville borough	11-20
South Amboy city	11-20
South Brunswick township	21-25
South Plainfield borough	1-10
South River borough	11-20
Spotswood borough	21-25
Woodbridge township	1-10
MONMOUTH COUNTY	
Allenhurst borough	31-40
Allentown borough	31-40
Asbury Park city	31-40
Atlantic township	26-30
Atlantic Highlands borough	26-30
Avon-by-the-Sea borough	41-50
Belmar borough	41-50
Bradley Beach borough	41-50
Brielle borough	41-50
Deal borough	31-40
Eatontown borough	31-40
Englishtown borough	21-25
Fair Haven borough	31-40
Farmingdale borough	31-40
Freehold borough	26-30
Freehold township	26-30
Highlands borough	31-40
Holmdel township	21-25
Howell township	31-40
Interlaken borough	31-40
Keansburg borough	21-25
Keyport borough	11-20
Little Silver borough	31-40
Loch Arbour village	31-40
Long Branch city	31-40

MINOR CIVIL DIVISIONS IN THE STATE OF NEW JERSEY—Continued

	Freight zone (miles)
Manalapan township	21-25
Manasquan borough	41-50
Marlboro township	21-25
Matawan borough	11-20
Matawan township	11-20
Middletown township	21-25
Millstone township	31-40
Monmouth Beach borough	31-40
Neptune township	31-40
Neptune City borough	31-40
New Shrewsbury borough	31-40
Ocean township	31-40
Oceanport borough	31-40
Raritan township	21-25
Red Bank borough	26-30
Roosevelt borough	31-40
Rumson borough	31-40
Sea Bright borough	31-40
Sea Girt borough	41-50
Shrewsbury borough	31-40
Shrewsbury township	31-40
South Belmar borough	41-50
Spring Lake borough	41-50
Spring Lake Heights borough	41-50
Union Beach borough	21-25
Upper Freehold township	31-40
Wall township	31-40
West Long Branch borough	31-40
MORRIS COUNTY	
Boonton town	11-20
Boonton township	11-20
Butler borough	11-20
Chatham borough	1-10
Chatham township	1-10
Chester borough	21-25
Chester township	21-25
Denville township	11-20
Dover town	11-20
East Hanover township	1-10
Florham Park borough	1-10
Hanover township	11-20
Harding township	11-20
Jefferson township	21-25
Kinnelon borough	11-20
Lincoln Park borough	1-10
Madison borough	1-10
Mendham borough	11-20
Mendham township	11-20
Mine Hill township	11-20
Montville township	1-10
Morris township	11-20
Morris Plains borough	11-20
Morristown town	11-20
Mountain Lakes borough	11-20
Mount Arlington borough	21-25
Mount Olive township	26-30
Netcong borough	26-30
Parsippany-Troy Hills township	1-10
Passaic township	11-20
Pequannock township	11-20
Randolph township	11-20
Riverdale borough	11-20
Rockaway borough	11-20
Rockaway township	11-20
Roxbury township	21-25
Victory Gardens borough	11-20
Washington township	26-30
Wharton borough	11-20

MINOR CIVIL DIVISIONS IN THE STATE OF NEW JERSEY—Continued

	Freight zone (miles)
OCEAN COUNTY	
Barnegat Light borough	81-90
Bay Head borough	41-50
Beach Haven borough	81-90
Beachwood borough	51-60
Berkeley township	51-60
Brick township	41-50
Dover township	41-50
Eagleswood township	71-75
Harvey Cedars borough	81-90
Island Beach borough	51-60
Island Heights borough	51-60
Jackson township	31-40
Lacey township	51-60
Lakehurst borough	41-50
Lakewood township	41-50
Lavallette borough	41-50
Little Egg Harbor township	71-75
Long Beach township	81-90
Manchester township	41-50
Mantoloking borough	41-50
Ocean township	61-70
Ocean Gate borough	51-60
Pine Beach borough	51-60
Plumstead township	41-50
Point Pleasant borough	41-50
Point Pleasant Beach borough	41-50
Seaside Heights borough	51-60
Seaside Park borough	51-60
Ship Bottom borough	81-90
South Toms River borough	51-60
Stafford township	71-75
Surf City borough	81-90
Tuckerton borough	76-80
Union township	61-70
PASSAIC COUNTY	
Bloomingdale borough	11-20
Pompton Lakes borough	11-20
Ringwood borough	11-20
Wanaque borough	11-20
West Milford township	11-20
All other minor civil divisions	1-10
SALEM COUNTY	
Alloway township	91-100
Elmer borough	91-100
Elsinboro township	91-100
Lower Alloways Creek township	91-100
Lower Penns Neck township	91-100
Mannington township	91-100
Oldmans township	81-90
Penns Grove borough	91-100
Pilesgrove township	81-90
Pittsgrove township	91-100
Quinton township	91-100
Salem city	91-100
Upper Penns Neck township	91-100
Upper Pittsgrove township	81-90
Woodstown borough	81-90
SOMERSET COUNTY	
Bedminster township	21-25
Bernards township	11-20
Bernardsville borough	11-20
Bound Brook borough	11-20
Branchburg township	26-30
Bridgewater township	11-20
Far Hills borough	21-25
Franklin township	11-20

MINOR CIVIL DIVISIONS IN THE STATE OF NEW JERSEY—Continued

	Freight zone (miles)
Green Brook township	11-20
Hillsborough township	21-25
Manville borough	21-25
Millstone borough	21-25
Montgomery township	26-30
North Plainfield borough	11-20
Peapack-Gladstone borough	21-25
Raritan borough	21-25
Rocky Hill borough	26-30
Somerville borough	21-25
South Bound Brook borough	11-20
Warren township	11-20
Watchung borough	11-20
SUSSEX COUNTY	
Andover borough	31-40
Andover township	31-40
Branchville borough	31-40
Byram township	26-30
Frankford township	31-40
Franklin borough	26-30
Fredon township	31-40
Green township	31-40
Hamburg borough	26-30
Hampton township	31-40
Hardyston township	26-30
Hopatcong borough	26-30
Lafayette township	31-40
Montague township	41-50
Newton town	31-40
Ogdensburg borough	26-30
Sandyston township	41-50
Sparta township	26-30
Stanhope borough	26-30
Stillwater township	41-50
Sussex borough	31-40
Vernon township	26-30
Walpack township	41-50
Wantage township	31-40
UNION COUNTY	
All minor civil divisions	1-10
WARREN COUNTY	
Allamuchy township	31-40
Alpha borough	41-50
Belvidere town	41-50
Blairstown township	41-50
Franklin township	41-50
Frelinghuysen township	31-40
Greenwich township	41-50
Hackettstown town	31-40
Hardwick township	41-50
Harmony township	41-50
Hope township	41-50
Independence township	31-40
Knowlton township	51-60
Liberty township	41-50
Lopatcong township	51-60
Mansfield township	31-40
Oxford township	41-50
Pahaquarry township	41-50
Phillipsburg town	51-60
Pohatcong township	41-50
Washington borough	41-50
Washington township	41-50
White township	41-50

MINOR CIVIL DIVISIONS IN THE STATE OF NEW YORK

	Freight zone (miles)
ALBANY COUNTY	
Albany city	131-140
Berne town	131-140
Bethlehem town	121-125
Coeymans town	111-120
Cohoes city	131-140
Colonie town	131-140
Green Island town	131-140
Guilderland town	131-140
Knox town	141-150
New Scotland town	131-140
Rensselaerville town	121-125
Watervliet city	131-140
Westerlo town	121-125
ALLEGANY COUNTY	
Alfred town	271-275
Allen town	281-290
Alma town	281-290
Almond town	271-275
Amity town	281-290
Andover town	271-275
Angelica town	281-290
Belfast town	291-300
Birdsall town	276-280
Bolivar town	291-300
Burns town	271-275
Caneadea town	291-300
Centerville town	301-310
Clarksville town	291-300
Cuba town	291-300
Friendship town	291-300
Genesee town	291-300
Granger town	281-290
Grove town	281-290
Hume town	291-300
Independence town	261-270
New Hudson town	291-300
Rushford town	301-310
Scio town	281-290
Ward town	276-280
Wellsville town	276-280
West Almond town	276-280
Willing town	276-280
Wirt town	291-300
BROOME COUNTY	
Barker town	171-175
Binghamton city	151-160
Binghamton town	141-156
Chenango town	141-160
Colesville town	141-150
Conklin town	141-150
Dickinson town	151-160
Fenton town	151-160
Kirkwood town	141-150
Lisle town	171-175
Maine town	161-170
Nanticoke town	171-175
Sanford town	131-140
Triangle town	171-175
Union town	151-160
Vestal town	151-160
Windsor town	131-140
CATTARAUGUS COUNTY	
Allegany town	311-320
Ashford town	331-340
Carrollton town	311-320

MINOR CIVIL DIVISIONS IN THE STATE OF NEW YORK—Continued

	Freight zone (miles)
Cold Spring town	331-340
Conewango town	341-350
Dayton town	341-350
East Otto town	331-340
Elko town	331-340
Ellicottville town	326-330
Farmersville town	301-310
Franklinville town	311-320
Freedom town	311-320
Great Valley town	321-325
Hinsdale town	301-310
Humphrey town	311-320
Ischua town	301-310
Leon town	341-350
Little Valley town	326-330
Lyndon town	301-310
Machias town	311-320
Mansfield town	331-340
Napoli town	331-340
New Albion town	331-340
Olean city	311-320
Olean town	311-320
Otto town	331-340
Perrysburg town	341-350
Persia town	341-350
Portville town	301-310
Randolph town	341-350
Red House town	326-330
Salamanca city	326-330
Salamanca town	326-330
South Valley town	341-350
Yorkshire town	311-320
Allegany Indian Reservation:	
East of Salamanca city	311-320
West of Salamanca city	326-330
Cattaraugus Indian Reservation	341-350
CAYUGA COUNTY	
Auburn city	231-240
Aurelius town	231-240
Brutus town	231-240
Cato town	231-240
Conquest town	241-250
Fleming town	221-225
Genoa town	211-220
Ira town	241-250
Ledyard town	221-225
Locke town	201-210
Mentz town	231-240
Montezuma town	231-240
Moravia town	211-220
Niles town	211-220
Owasco town	211-220
Scipio town	211-210
Sempronius town	201-210
Sennett town	221-225
Springport town	226-230
Sterling town	241-250
Summerhill town	201-210
Throop town	231-240
Venice town	211-220
Victor town	241-250
CHAUTAUQUA COUNTY	
Arkwright town	351-360
Busti town	361-370
Carroll town	351-360
Charlotte town	351-360
Chautauqua town	371-375

MINOR CIVIL DIVISIONS IN THE STATE OF NEW YORK—Continued

	Freight zone (miles)
Cherry Creek town	351-360
Clymer town	376-380
Dunkirk city	361-370
Dunkirk town	361-370
Ellery town	361-370
Ellicott town	351-360
Ellington town	341-350
French Creek town	381-390
Gerry town	351-360
Hanover town	351-360
Harmony town	361-370
Jamestown city	351-360
Kiantone town	351-360
Mina town	381-390
North Harmony town	361-370
Poland town	341-350
Pomfret town	361-370
Portland town	371-375
Ripley town	381-390
Sheridan town	361-370
Sherman town	376-380
Stockton town	361-370
Villenova town	351-360
Westfield town	381-390
Cattaraugus Indian Reservation	341-350
CHEMUNG COUNTY	
Ashland town	201-210
Baldwin town	191-200
Big Flats town	211-220
Catlin town	211-220
Chemung town	191-200
Elmira city	201-210
Elmira town	201-210
Erin town	191-200
Horseheads town	201-210
Southport town	211-220
Van Etten town	191-200
Veteran town	201-210
CHENANGO COUNTY	
Afton town	141-150
Bainbridge town	141-150
Columbus town	171-175
Coventry town	151-160
German town	176-180
Greene town	161-170
Guilford town	151-160
Lincklaen town	181-190
McDonough town	171-175
New Berlin town	171-175
North Norwich town	171-175
Norwich city	161-170
Norwich town	161-170
Otselic town	181-190
Oxford town	151-160
Pharsalia town	176-180
Pitcher town	176-180
Plymouth town	171-175
Preston town	161-170
Sherburne town	176-180
Smithville town	161-170
Smyrna town	176-180
CLINTON COUNTY	
Altona town	301-310
Ausable town	281-290
Beekmantown town	301-310
Black Brook town	281-290

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MINOR CIVIL DIVISIONS IN THE STATE OF NEW YORK—Continued

	Freight zone (miles)
Champlain town	311-320
Chazy town	301-310
Clinton town	326-330
Dannemora town	301-310
Ellenburg town	311-320
Mooers town	311-320
Peru town	281-290
Plattsburgh city	291-300
Plattsburgh town	291-300
Saranac town	291-300
Schuyler Falls town	291-300
COLUMBIA COUNTY	
Ancram town	91-100
Austerlitz town	101-110
Canaan town	111-120
Chatham town	111-120
Claverack town	91-100
Clermont town	81-90
Copake town	91-100
Gallatin town	81-90
Germantown town	81-90
Ghent town	101-110
Greenport town	91-100
Hillsdale town	101-110
Hudson city	91-100
Kinderhook town	101-110
Livingston town	81-90
New Lebanon town	111-120
Stockport town	101-110
Stuyvesant town	101-110
Taghkanic town	91-100
CORTLAND COUNTY	
Cincinnatus town	181-190
Cortland city	181-190
Cortlandville town	181-190
Cuyler town	191-200
Freetown town	181-190
Harford town	181-190
Homer town	191-200
Lapeer town	176-180
Marathon town	176-180
Preble town	201-210
Scott town	201-210
Solon town	181-190
Taylor town	181-190
Truxton town	191-200
Virgil town	181-190
Willet town	176-180
DELAWARE COUNTY	
Andes town	111-120
Bovina town	131-140
Colchester town	101-110
Davenport town	141-150
Delhi town	131-140
Deposit town	126-130
Franklin town	141-150
Hamden town	131-140
Hancock town	101-110
Harpursfield town	141-150
Kortright town	141-150
Masonville town	141-150
Meredith town	141-150
Middletown town	111-120
Roxbury town	126-130
Sidney town	141-150
Stamford town	131-140

MINOR CIVIL DIVISIONS IN THE STATE OF NEW YORK—Continued

	Freight zone (miles)
Tompkins town	121-125
Walton town	131-140
DUTCHESS COUNTY	
Amenia town	71-75
Beacon city	41-50
Beekman town	51-60
Clinton town	71-75
Dover town	51-60
East Fishkill town	41-50
Fishkill town	41-50
Hyde Park town	61-70
La Grange town	51-60
Milan town	81-90
Northeast town	81-90
Pawling town	51-60
Pine Plains town	81-90
Pleasant Valley town	61-70
Poughkeepsie city	51-60
Poughkeepsie town	51-60
Red Hook town	76-80
Rhinebeck town	71-75
Stanford town	71-75
Union Vale town	61-70
Wappinger town	41-50
Washington town	61-70
ERIE COUNTY	
Alden town	321-325
Amherst town	331-340
Aurora town	331-340
Boston town	341-350
Brant town	341-350
Buffalo city	331-340
Cheektowaga town	331-340
Clarence town	326-330
Colden town	331-340
Collins town	341-350
Concord town	331-340
Eden town	341-350
Elma town	331-340
Evans town	351-360
Grand Island town	341-350
Hamburg town	341-350
Holland town	326-330
Lackawanna city	341-350
Lancaster town	326-330
Marilla town	326-330
Newstead town	321-325
North Collins town	341-350
Orchard Park town	341-350
Sardinia town	326-330
Tonawanda city	341-350
Tonawanda town	341-350
Wales town	326-330
West Seneca town	331-340
Cattaraugus Indian Reservation	341-350
Tonawanda Indian Reservation	311-320
ESSEX COUNTY	
Chesterfield town	271-275
Crown Point town	231-240
Elizabethtown town	241-250
Essex town	251-260
Jay town	271-275
Keene town	251-260
Lewis town	251-260
Minerva town	221-225
Moriah town	231-240

MINOR CIVIL DIVISIONS IN THE STATE OF NEW YORK—Continued

	Freight zone (miles)
Newcomb town	241-250
North Elba town	271-275
North Hudson town	231-240
St. Armand town	281-290
Schroon town	221-225
Ticonderoga town	221-225
Westport town	241-250
Willsboro town	261-270
Wilmington town	271-275
FRANKLIN COUNTY	
Altamont town	271-275
Bangor town	331-340
Bellmont town	311-320
Bombay town	341-350
Brandon town	331-340
Brighton town	291-300
Burke town	331-340
Chateaugay town	331-340
Constable town	331-340
Dickinson town	326-330
Duane town	311-320
Fort Covington town	341-350
Franklin town	281-290
Harrietstown town	281-290
Malone town	326-330
Moira town	331-340
Santa Clara town	291-300
Waverly town	311-320
Westville town	331-340
St. Regis Indian Reservation	351-360
FULTON COUNTY	
Bleecker town	181-190
Broadalbin town	161-170
Caroga town	181-190
Ephratah town	176-180
Gloversville city	171-175
Johnstown city	171-175
Johnstown town	171-175
Mayfield town	171-175
Northampton town	176-180
Oppenheim town	181-190
Perth town	161-170
Stratford town	181-190
GENESEE COUNTY	
Alabama town	311-320
Alexander town	311-320
Batavia city	311-320
Batavia town	311-320
Bergen town	301-310
Bethany town	301-310
Byron town	301-310
Darien town	311-320
Elba town	311-320
Le Roy town	291-300
Oakfield town	311-320
Pavilion town	291-300
Pembroke town	311-320
Stafford town	301-310
Tonawanda Indian Reservation	311-320
GREENE COUNTY	
Ashland town	111-120
Athens town	101-110
Cairo town	101-110
Catskill town	91-100
Coxsackie town	101-110
Durham town	111-120
Greenville town	111-120
Halcott town	121-125
Hunter town	91-100
Jewett town	101-110
Lexington town	111-120
New Baltimore town	111-120
Prattsville town	121-125
Windham town	111-120
HAMILTON COUNTY	
Arietta town	191-200
Benson town	181-190
Hope town	181-190
Indian Lake town	221-225
Inlet town	261-270
Lake Pleasant town	201-210
Long Lake town	251-260
Morehouse town	221-225
Wells town	191-200
HERKIMER COUNTY	
Columbia town	181-190
Danube town	181-190
Fairfield town	191-200
Frankfort town	191-200
German Flatts town	191-200
Herkimer town	191-200
Litchfield town	191-200
Little Falls city	191-200
Little Falls town	191-200
Manheim town	181-190
Newport town	201-210
Norway town	201-210
Ohio town	201-210
Russia town	201-210
Salisbury town	191-200
Schuyler town	191-200
Stark town	181-190
Warren town	181-190
Webb town	241-250
Winfield town	181-190
JEFFERSON COUNTY	
Adams town	276-280
Alexandria town	301-310
Antwerp town	281-290
Brownville town	291-300
Cape Vincent town	301-310
Champion town	276-280
Clayton town	291-300
Ellisburg town	261-270
Henderson town	276-280
Hounsfield town	281-290
Le Ray town	281-290
Lorraine town	261-270
Lyme town	291-300
Orleans town	291-300
Pamelia town	281-290
Philadelphia town	281-290
Rodman town	276-280
Rutland town	281-290
Theresa town	291-300
Watertown city	281-290
Watertown town	281-290
Wilna town	276-280
Worth town	261-270

MINOR CIVIL DIVISIONS IN THE STATE OF NEW YORK—Continued

	Freight zone (miles)
LEWIS COUNTY	
Croghan town	271-275
Denmark town	271-275
Diana town	281-290
Greig town	251-260
Harrisburg town	261-270
High Market town	241-250
Lewis town	231-240
Leydon town	241-250
Lowville town	261-270
Lyonsdale town	241-250
Martinsburg town	251-260
Montague town	261-270
New Bremen town	261-270
Osceola town	241-250
Pinckney town	276-280
Turin town	251-260
Watson town	261-270
West Turin town	241-250
LIVINGSTON COUNTY	
Avon town	281-290
Caledonia town	281-290
Conesus town	276-280
Geneseo town	281-290
Groveland town	281-290
Leicester town	291-300
Lima town	276-280
Livonia town	276-280
Mount Morris town	281-290
North Dansville town	271-275
Nunda town	281-290
Ossian town	276-280
Portage town	291-300
Sparta town	271-275
Springwater town	261-270
West Sparta town	276-280
York town	281-290
MADISON COUNTY	
Brookfield town	181-190
Cazenovia town	201-210
De Ruyter town	191-200
Eaton town	191-200
Fenner town	201-210
Georgetown town	181-190
Hamilton town	181-190
Lebanon town	181-190
Lenox town	211-220
Lincoln town	201-210
Madison town	191-200
Nelson town	191-200
Oneida city	211-220
Smithfield town	201-210
Stockbridge town	201-210
Sullivan town	211-220
MONROE COUNTY	
Brighton town	281-290
Chili town	281-290
Clarkson town	301-310
Gates town	281-290
Greece town	291-300
Hamlin town	311-320
Henrietta town	281-290
Irondequoit town	281-290
Mendon town	271-275
Ogden town	291-300
Parma town	291-300

MINOR CIVIL DIVISIONS IN THE STATE OF NEW YORK—Continued

	Freight zone (miles)
Penfield town	271-275
Perinton town	271-275
Pittsford town	276-280
Riga town	291-300
Rochester city	281-290
Rush town	281-290
Sweden town	301-310
Webster town	281-290
Wheatland town	291-300
MONTGOMERY COUNTY	
Amsterdam city	151-160
Amsterdam town	151-160
Canajoharie town	171-175
Charleston town	151-160
Florida town	151-160
Glen town	161-170
Minden town	176-180
Mohawk town	171-175
Palatine town	171-175
Root town	161-170
St. Johnsville town	176-180
NIAGARA COUNTY	
Cambria town	341-350
Hartland town	331-340
Lewiston town	341-350
Lockport city	331-340
Lockport town	331-340
Newfane town	341-350
Niagara town	341-350
Niagara Falls city	351-360
North Tonawanda city	341-350
Pendleton town	331-340
Porter town	351-360
Royalton town	321-325
Somerset town	331-340
Wheatfield town	341-350
Wilson town	341-350
Tonawanda Indian Reservation	311-320
Tuscarora Indian Reservation	341-350
ONEIDA COUNTY	
Annsville town	226-230
Augusta town	201-210
Ava town	231-240
Boonville town	231-240
Bridgewater town	191-200
Camden town	231-240
Deerfield town	201-210
Florence town	231-240
Floyd town	211-220
Forestport town	231-240
Kirkland town	201-210
Lee town	226-230
Marcy town	211-220
Marshall town	201-210
New Hartford town	201-210
Paris town	191-200
Remsen town	221-225
Rome city	221-225
Sangerfield town	191-200
Steuben town	221-225
Trenton town	211-220
Utica city	201-210
Vernon town	211-220
Verona town	226-230
Vienna town	231-240
Western town	226-230

MINOR CIVIL DIVISIONS IN THE STATE OF NEW YORK—Continued

	Freight zone (miles)
Westmoreland town	211-220
Whitestown town	211-220
ONONDAGA COUNTY	
Camillus town	226-230
Cicero town	226-230
Clay town	231-240
De Witt town	221-225
Elbridge town	226-230
Fabius town	201-210
Geddes town	226-230
Lafayette town	211-220
Lysander town	231-240
Manlius town	211-220
Marcellus town	211-220
Onondaga town	221-225
Otisco town	211-220
Pompey town	201-210
Salina town	226-230
Skaneateles town	211-220
Spafford town	201-210
Syracuse city	226-230
Tully town	201-210
Van Buren town	231-240
Onondaga Indian Reservation	211-220
ONTARIO COUNTY	
Bristol town	261-270
Canadice town	261-270
Canandaigua city	251-260
Canandaigua town	251-260
East Bloomfield town	261-270
Farmington town	261-270
Geneva city	241-250
Geneva town	241-250
Gorham town	251-260
Hopewell town	251-260
Manchester town	251-260
Naples town	251-260
Phelps town	241-250
Richmond town	261-270
Seneca town	241-250
South Bristol town	261-270
Victor town	261-270
West Bloomfield town	271-275
ORANGE COUNTY	
Blooming Grove town	31-40
Chester town	31-40
Cornwall town	41-50
Crawford town	61-70
Deerpark town	51-60
Goshen town	41-50
Greenville town	51-60
Hamptonburgh town	41-50
Highlands town	31-40
Middletown city	51-60
Minisink town	41-50
Monroe town	31-40
Montgomery town	51-60
Mount Pope town	51-60
Newburgh city	41-50
Newburgh town	41-50
New Windsor town	41-50
Port Jervis city	51-60
Tuxedo town	21-25
Wallkill town	51-60
Warwick town	26-30
Wawayanda town	41-50

MINOR CIVIL DIVISIONS IN THE STATE OF NEW YORK—Continued

	Freight zone (miles)
Woodbury town	31-40
ORLEANS COUNTY	
Albion town	311-320
Barre town	311-320
Carlton town	311-320
Clarendon town	301-310
Gaines town	311-320
Kendall town	311-320
Murray town	301-310
Ridgeway town	321-325
Shelby town	321-325
Yates town	326-330
OSWEGO COUNTY	
Albion town	251-260
Amboy town	241-250
Boylston town	261-270
Constantia town	241-250
Fulton city	241-250
Granby town	241-250
Hannibal town	241-250
Hastings town	241-250
Mexico town	251-260
Minnetto town	251-260
New Haven town	251-260
Orwell town	251-260
Oswego city	251-260
Oswego town	251-260
Palermo town	241-250
Parish town	251-260
Redfield town	241-250
Richland town	251-260
Sandy Creek town	261-270
Schroeppel town	241-250
Scriba town	251-260
Volney town	241-250
West Monroe town	241-250
Williamstown town	241-250
OTSEGO COUNTY	
Burlington town	171-175
Butternuts town	161-170
Cherry Valley town	161-170
Decatur town	151-160
Edmeston town	176-180
Exeter town	171-175
Hartwick town	161-170
Laurens town	151-160
Maryland town	151-160
Middlefield town	161-170
Milford town	151-160
Morris town	161-170
New Lisbon town	161-170
Oneonta city	151-160
Oneonta town	151-160
Otego town	151-160
Otsego town	176-180
Pittsfield town	161-170
Plainfield town	181-190
Richfield town	181-190
Roseboom town	151-160
Springfield town	171-175
Unadilla town	151-160
Westford town	161-170
Worcester town	151-160
PUTNAM COUNTY	
Carmel town	31-40

BEST COPY AVAILABLE

MINOR CIVIL DIVISIONS IN THE STATE OF NEW YORK—Continued

	Freight zone (miles)
Kent town	31-40
Patterson town	41-50
Philipstown town	31-40
Putnam Valley town	31-40
Southeast town	31-40
RENSSELAER COUNTY	
Berlin town	141-150
Brunswick town	131-140
East Greenbush town	126-130
Grafton town	131-140
Hoosick town	151-160
Nassau town	121-125
North Greenbush town	131-140
Petersburg town	141-150
Pittstown town	141-150
Poestenkill town	131-140
Rensselaer city	126-130
Sand Lake town	126-130
Schaghticoke town	141-150
Schodack town	111-120
Stephentown town	131-140
Troy city	131-140
ROCKLAND COUNTY	
Clarkstown town	11-20
Haverstraw town	21-25
Orangetown town	1-10
Ramapo town	11-20
Stony Point town	21-25
ST. LAWRENCE COUNTY	
Brasher town	341-350
Canton town	321-325
Clare town	311-320
Clifton town	301-310
Colton town	301-310
DeKalb town	311-320
De Peyster town	311-320
Edwards town	301-310
Fine town	301-310
Fowler town	291-300
Gouverneur town	291-300
Hammond town	301-310
Hermon town	301-310
Hopkinton town	326-330
Lawrence town	331-340
Lisbon town	326-330
Louisville town	341-350
Macomb town	301-310
Madrid town	331-340
Massena town	351-360
Morristown town	311-320
Norfolk town	341-350
Ogdensburg city	331-340
Oswegatchie town	321-325
Parishville town	311-320
Piercefield town	291-300
Pierrepont town	321-325
Pitcairn town	291-300
Potsdam town	331-340
Rossie town	291-300
Russell town	311-320
Stockholm town	331-340
Waddington town	341-350
SARATOGA COUNTY	
Ballston town	151-160
Charlton town	151-160
Clifton Park town	141-150
Corinth town	176-180
Day town	181-190
Edinburg town	176-180
Galway town	161-170
Greenfield town	161-170
Hadley town	181-190
Halfmoon town	141-150
Malta town	151-160
Mechanicville city	141-150
Milton town	161-170
Moreau town	171-175
Northumberland town	161-170
Providence town	161-170
Saratoga town	151-160
Saratoga Springs city	161-170
Stillwater town	141-150
Waterford town	131-140
Wilton town	161-170
SCHENECTADY COUNTY	
Duanesburg town	141-150
Glenville town	141-150
Niskayuna town	141-150
Princetown town	141-150
Rotterdam town	141-150
Schenectady city	141-150
SCHOHARIE COUNTY	
Blenheim town	131-140
Broome town	131-140
Carlisle town	151-160
Cobleskill town	141-150
Conesville town	126-130
Esperance town	151-160
Fulton town	131-140
Gilboa town	131-140
Jefferson town	141-150
Middleburg town	131-140
Richmondville town	141-150
Schoharie town	141-150
Seward town	151-160
Sharon town	151-160
Summit town	141-150
Wright town	141-150
SCHUYLER COUNTY	
Catharine town	201-210
Cayuta town	201-210
Dix town	211-220
Hector town	201-210
Montour town	211-220
Orange town	221-225
Reading town	221-225
Tyrone town	231-240
SENECA COUNTY	
Covert town	211-220
Fayette town	231-240
Junius town	241-250
Lodi town	211-220
Ovid town	211-220
Romulus town	221-225
Seneca Falls town	231-240
Tyre town	241-250
Varick town	226-280
Waterloo town	231-240

MINOR CIVIL DIVISIONS IN THE STATE OF NEW YORK—Continued

	Freight zone (miles)
STEUBEN COUNTY	
Addison town	231-240
Avoca town	251-260
Bath town	231-240
Bradford town	231-240
Cameron town	241-250
Campbell town	231-240
Canisteo town	251-260
Caton town	221-225
Cohocton town	251-260
Corning city	226-230
Corning town	221-225
Dansville town	261-270
Erwin town	226-230
Fremont town	261-270
Greenwood town	261-270
Hartsville town	261-270
Hornby town	226-230
Hornell city	261-270
Hornellsville town	261-270
Howard town	251-260
Jasper town	251-260
Lindley town	226-230
Prattsburg town	241-250
Pulteney town	241-250
Rathbone town	241-250
Thurston town	231-240
Troupsburg town	251-260
Tuscarora town	231-240
Urbana town	231-240
Wayland town	261-270
Wayne town	231-240
West Union town	261-270
Wheeler town	241-250
Woodhull town	241-250
SULLIVAN COUNTY	
Bethel town	81-90
Callicoon town	91-100
Cochecton town	81-90
Delaware town	91-100
Fallsburgh town	76-80
Forestburg town	61-70
Fremont town	101-110
Highland town	71-75
Liberty town	81-90
Lumberland town	61-70
Mamakating town	61-70
Neversink town	91-100
Rockland town	91-100
Thompson town	71-75
Tusten town	76-80
TIOGA COUNTY	
Barton town	181-190
Berkshire town	176-180
Candor town	176-180
Newark Valley town	161-170
Nichols town	171-175
Owego town	161-170
Richford town	181-190
Spencer town	181-190
Tioga town	171-175
TOMPKINS COUNTY	
Caroline town	181-190
Danby town	181-190
Dryden town	191-200
Enfield town	201-210

MINOR CIVIL DIVISIONS IN THE STATE OF NEW YORK—Continued

	Freight zone (miles)
Groton town	201-210
Ithaca city	191-200
Ithaca town	191-200
Lansing town	201-210
Newfield town	191-200
Ulysses town	201-210
ULSTER COUNTY	
Denning town	91-100
Esopus town	61-70
Gardiner town	61-70
Hardenburgh town	111-120
Hurley town	81-90
Kingston city	76-80
Kingston town	81-90
Lloyd town	61-70
Marbletown town	76-80
Marlborough town	51-60
New Platz town	61-70
Olive town	81-90
Plattekill town	51-60
Rochester town	76-80
Rosendale town	76-80
Saugerties town	81-90
Shandaken town	91-100
Shawangunk town	51-60
Ulster town	81-90
Wawarsing town	76-80
Woodstock town	81-90
WARREN COUNTY	
Bolton town	191-200
Caldwell town	181-190
Chester town	201-210
Glens Falls city	176-180
Hague town	201-210
Horicon town	201-210
Johnsburg town	201-210
Luzerne town	181-190
Queensbury town	176-180
Stony Creek town	191-200
Thurman town	191-200
Warrensburg town	191-200
WASHINGTON COUNTY	
Argyle town	171-175
Cambridge town	151-160
Dresden town	201-210
Easton town	151-160
Fort Ann town	181-190
Fort Edward town	171-175
Granville town	191-200
Hampton town	191-200
Greenwich town	161-170
Hartford town	181-190
Hebron town	181-190
Jackson town	171-175
Kingsbury town	176-180
Putnam town	211-220
Salem town	176-180
White Creek town	161-170
Whitehall town	191-200
WAYNE COUNTY	
Arcadia town	251-260
Butler town	241-250
Galen town	241-250
Huron town	251-260
Lyons town	251-260

MINOR CIVIL DIVISIONS IN THE STATE OF NEW YORK—Continued

	Freight zone (miles)
Macedon town	261-270
Marion town	261-270
Ontario town	281-290
Palmyra town	251-260
Rose town	251-260
Savannah town	241-250
Sodus town	261-270
Walworth town	271-275
Williamson town	276-280
Wolcott town	251-260
WESTCHESTER COUNTY	
Bedford town	21-25
Cortlandt town	11-20
Eastchester town	1-10
Greenburgh town	1-10
Harrison town	1-10
Lewisboro town	26-30
Mamaroneck town	1-10
Mount Pleasant town	11-20
Mount Vernon city	1-10
New Castle town	11-20
New Rochelle city	1-10
North Castle town	11-20
North Salem town	31-40
Ossining town	11-20
Peekskill city	11-20
Pelham town	1-10
Pound Ridge town	26-30
Rye city	1-10
Rye town	1-10
Scarsdale town	1-10
Somers town	21-25
White Plains city	1-10
Yonkers city	1-10
Yorktown town	11-20
WYOMING COUNTY	
Arcade town	311-320
Attica town	311-320
Bennington town	311-320
Castile town	291-300
Covington town	291-300
Eagle town	301-310
Gainesville town	301-310
Genesee Falls town	291-300
Java town	311-320
Middlebury town	301-310
Orangeville town	311-320
Perry town	291-300
Pike town	291-300
Sheldon town	311-320
Warsaw town	301-310
Weathersfield town	301-310
YATES COUNTY	
Barrington town	231-240
Benton town	241-250
Italy town	251-260
Jerusalem town	241-250
Middlesex town	251-260
Milo town	231-240
Potter town	251-260
Starkey town	231-240
Torrey town	241-250

MINOR CIVIL DIVISIONS IN THE STATE OF CONNECTICUT

	Freight zone (miles)
FAIRFIELD COUNTY	
Bethel town	41-50
Bridgeport town	41-50
Brookfield town	51-60
Danbury town	41-50
Darien town	21-25
Easton town	41-50
Fairfield town	31-40
Greenwich town	11-20
Monroe town	51-60
New Canaan town	26-30
New Fairfield town	51-60
Newtown town	51-60
Norwalk town	26-30
Redding town	41-50
Ridgefield town	31-40
Shelton town	41-50
Sherman town	51-60
Stamford town	11-20
Stratford town	41-50
Trumbull town	41-50
Weston town	31-40
Westport town	31-40
Wilton town	31-40
LITCHFIELD COUNTY	
Barkhamsted town	91-100
Bethlehem town	76-80
Bridgewater town	51-60
Canaan town	91-100
Colebrook town	91-100
Cornwall town	76-80
Goshen town	81-90
Harwinton town	81-90
Kent town	61-70
Litchfield town	76-80
Morris town	76-80
New Hartford town	91-100
New Milford town	51-60
Norfolk town	91-100
North Canaan town	91-100
Plymouth town	81-90
Roxbury town	61-70
Salisbury town	81-90
Sharon town	76-80
Thomaston town	81-90
Torrington town	81-90
Warren town	71-75
Washington town	61-70
Watertown town	76-80
Winchester town	81-90
Woodbury town	61-70
NEW HAVEN COUNTY	
Southbury town	51-60

COUNTIES IN THE STATE OF DELAWARE

	Freight zone (miles)
Kent	131-140
New Castle	91-100
Sussex	161-170

COUNTIES IN THE STATE OF MARYLAND

	Freight zone (miles)
Baltimore	151-160
Caroline	161-170
Carroll	181-190
Cecil	111-120
Frederick	191-200
Harford	131-140
Kent	131-140
Queen Annes	141-150
Talbot	181-190
Washington	201-210

MINOR CIVIL DIVISIONS IN THE STATE OF MASSACHUSETTS

	Freight zone (miles)
BERKSHIRE COUNTY	
Adams town	141-150
Alford town	111-120
Becket town	121-125
Cheshire town	131-140
Clarksburg town	151-160
Dalton town	131-140
Egremont town	101-110
Florida town	151-160
Great Barrington town	101-110
Hancock town	126-130
Hinsdale town	131-140
Lanesborough town	131-140
Lee town	111-120
Lenox town	121-125
Monterey town	111-120
Mount Washington town	101-110
New Ashford town	141-150
New Marlborough town	101-110
North Adams city	141-150
Otis town	121-125
Peru town	131-140
Pittsfield city	126-130
Richmond town	121-125
Sandisfield town	101-110
Savoy town	141-150
Sheffield town	91-100
Stockbridge town	111-120
Tyringham town	121-125
Washington town	121-125
West Stockbridge town	111-120
Williamstown town	141-150
Windsor town	131-140

MINOR CIVIL DIVISIONS IN THE STATE OF PENNSYLVANIA

	Freight zone (miles)
ADAMS COUNTY	
Abbottstown borough	171-175
Arendtsville borough	181-190
Bendersville borough	176-180
Berwick township	171-175
Biglerville borough	176-180
Butler township	176-180
Conewago township	171-175
Cumberland township	181-190
East Berlin borough	161-170
Fairfield borough	181-190
Franklin township	181-190
Freedom township	181-190
Germany township	181-190
Gettysburg borough	181-190
Hamilton township	161-170
Hamiltonban township	181-190
Highland township	181-190
Huntington township	171-175
Latimore township	171-175
Liberty township	181-190
Littlestown borough	181-190
McSherrystown borough	171-175
Menallen township	176-180
Mount Joy township	181-190
Mount Pleasant township	176-180
New Oxford borough	171-175
Oxford township	171-175
Reading township	161-170
Straban township	171-175
Tyrone township	171-175
Union township	176-180
York Springs borough	171-175
BEDFORD COUNTY	
Bedford borough	241-250
Bedford township	241-250
Bloomfield township	241-250
Broad Top township	226-230
Coaldale borough	226-230
East Providence township	226-230
Everett borough	231-240
Hopewell borough	231-240
Hopewell township	231-240
Kimmell township	251-260
King township	241-250
Liberty township	231-240
Saxton borough	231-240
Snake Spring Valley township	241-250
South Woodbury township	241-250
Union township	251-260
West Providence township	231-240
Woodbury borough	241-250
Woodbury township	241-250
BERKS COUNTY	
Adamstown borough	111-120
Albany township	81-90
Alsace township	101-110
Amity township	91-100
Bally borough	81-90
Bechtelsville borough	91-100
Bern township	101-110
Bernville borough	101-110
Bethel township	111-120
Birdsboro borough	101-110
Boyertown borough	91-100
Brecknock township	101-110
Caernarvon township	101-110
Centerport borough	101-110
Centre township	101-110
Colebrookdale township	91-100
Cumru township	101-110
District township	81-90
Douglass township	91-100
Earl township	91-100

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MINOR CIVIL DIVISIONS IN THE STATE OF PENNSYLVANIA—Continued

	Freight zone (miles)
Exeter township	101-110
Fleetwood borough	91-100
Greenwich township	81-90
Hamburg borough	101-110
Heidelberg township	111-120
Hereford township	81-90
Jefferson township	111-120
Kenhorst borough	101-110
Kutztown borough	81-90
Laureldale borough	101-110
Leesport borough	101-110
Lenhartsville borough	81-90
Longswamp township	81-90
Lower Alsace township	101-110
Lower Hidelberg township	101-110
Lyons borough	91-100
Maidencreek township	91-100
Marion township	111-120
Maxatawny township	81-90
Mohnton borough	101-110
Mount Penn borough	101-110
Muhlenberg township	101-110
North Heidelberg township	111-120
Oley township	91-100
Ontelaunee township	101-110
Penn township	101-110
Perry township	91-100
Pike township	91-100
Reading city	101-110
Richmond township	91-100
Robeson township	101-110
Robesonia borough	111-120
Rockland township	91-100
Ruscombmanor township	91-100
St. Lawrence borough	101-110
Shillington borough	101-110
Shoemakersville borough	101-110
Sinking Spring borough	101-110
South Heidelberg township	111-120
Spring township	101-110
Strausstown borough	111-120
Temple borough	101-110
Tilden township	101-110
Topton borough	81-90
Tulpehocken township	111-120
Union township	101-110
Upper Bern township	101-110
Upper Tulpehocken township	111-120
Washington township	81-90
Wernersville borough	101-110
West Lawn borough	101-110
West Reading borough	101-110
Windsor township	91-100
Womelsdorf borough	111-120
Wyomissing borough	101-110
Wyomissing Hills borough	101-110
BLAIR COUNTY	
Allegheny township	251-260
Altoona city	251-260
Antis township	241-250
Bellwood borough	241-250
Blair township	251-260
Catharine township	241-250
Duncansville borough	251-260
Frankstown township	241-250
Freedom township	251-260
Greenfield township	251-260

MINOR CIVIL DIVISIONS IN THE STATE OF PENNSYLVANIA—Continued

	Freight zone (miles)
Hollidaysburg borough	251-260
Huston township	241-250
Juniata township	261-270
Logan township	251-260
Martinsburg borough	241-250
Newry borough	251-260
North Woodbury township	241-250
Roaring Spring borough	241-250
Snyder township	241-250
Taylor township	241-250
Tyrone borough	241-250
Tyrone township	241-250
Williamsburg borough	241-250
Woodbury township	241-250
BRADFORD COUNTY	
Alba borough	181-190
Albany township	161-170
Armenia township	191-200
Asylum township	161-170
Athens borough	181-190
Athens township	181-190
Barclay township	176-180
Burlington borough	176-180
Burlington township	176-180
Canton borough	181-190
Canton township	181-190
Columbia township	191-200
Franklin township	171-175
Granville township	181-190
Herrick township	151-160
Le Raysville borough	151-160
Leroy township	181-190
Litchfield township	171-175
Monroe borough	161-170
Monroe township	161-170
New Albany borough	161-170
North Towanda township	161-170
Orwell township	161-170
Overton township	161-170
Pike township	151-160
Ridgebury township	181-190
Rome borough	161-170
Rome township	161-170
Sayre borough	181-190
Sheshequin township	171-175
Smithfield township	176-180
South Creek township	191-200
South Waverly borough	181-190
Springfield township	181-190
Standing Stone township	161-170
Stevens township	151-160
Sylvania borough	191-200
Terry township	151-160
Towanda borough	161-170
Towanda township	161-170
Troy borough	181-190
Troy township	181-190
Tuscarora township	141-150
Ulster township	176-180
Warren township	161-170
Wells township	201-210
West Burlington township	181-190
Wilmot township	151-160
Windham township	161-170
Wyalusing borough	151-160
Wyalusing township	151-160
Wysox township	161-170

MINOR CIVIL DIVISIONS IN THE STATE OF PENNSYLVANIA—Continued

	Freight zone (miles)
BUCKS COUNTY	
Bedminster township	61-70
Bensalem township	51-60
Bridgeton township	51-60
Bristol borough	51-60
Bristol township	51-60
Buckingham township	51-60
Chalfont borough	61-70
Doylestown borough	51-60
Doylestown township	51-60
Dublin borough	61-70
Durham township	51-60
East Rockhill township	61-70
Falls township	41-50
Haycok township	61-70
Hilltown township	61-70
Hulmeville borough	51-60
Ivyland borough	61-70
Langhorne borough	51-60
Langhorne Manor borough	51-60
Lower Makefield township	41-50
Lower Southampton township	51-60
Middletown township	51-60
Milford township	76-80
Morrisville borough	41-50
New Britain borough	61-70
New Britain township	61-70
New Hope borough	41-50
Newtown borough	51-60
Newtown township	51-60
Nockamixon township	51-60
Northampton township	51-60
Penndel borough	51-60
Perkasie borough	61-70
Plumstead township	51-60
Quakertown borough	76-80
Richland township	71-75
Richlandtown borough	71-75
Riegelsville borough	51-60
Sellersville borough	71-75
Silverdale borough	61-70
Solebury township	51-60
Springfield township	61-70
Telford borough	71-75
Tinicum township	51-60
Trumbauersville borough	76-80
Tullytown borough	41-50
Upper Makefield township	51-60
Upper Southampton township	51-60
Warminster township	61-70
Warrington township	61-70
Warwick township	51-60
West Rockhill township	71-75
Wrightstown township	51-60
Yardley borough	41-50
CARBON COUNTY	
Banks township	111-120
Beaver Meadows borough	111-120
Bowmanstown borough	91-100
East Penn township	91-100
East Side borough	91-100
Franklin township	91-100
Jim Thorpe borough	101-110
Kidder township	91-100
Lansford borough	101-110
Lausanne township	111-120
Lehigh township	101-110
Lehighton borough	91-100
Lower Towamensing township	81-90
Mahoning township	91-100
Mauch Chunk township	101-110
Packer township	101-110
Palmerton borough	81-90
Parryville borough	91-100
Penn Forest township	91-100
Summit Hill borough	101-110
Towamensing township	81-90
Weatherly borough	101-110
Weissport borough	91-100
CENTRE COUNTY	
Bellefonte township	211-220
Benner township	211-220
Boggs township	221-225
Burnside township	241-250
Centre Hall borough	201-210
College township	211-220
Curtin township	226-230
Ferguson township	221-225
Gregg township	201-210
Haines township	181-190
Halfmoon township	231-240
Harris township	211-220
Howard borough	211-220
Howard township	211-220
Huston township	231-240
Liberty township	211-220
Marion township	211-220
Miles township	181-190
Milesburg borough	221-225
Millheim borough	191-200
Patton township	226-230
Penn township	191-200
Philipsburg borough	241-250
Port Matilda borough	231-240
Potter township	201-210
Rush township	241-250
Snow Shoe borough	231-240
Snow Shoe township	231-240
South Philipsburg borough	241-250
Spring township	211-220
State College borough	211-220
Taylor township	241-250
Union township	226-230
Unionville borough	226-230
Walker township	201-210
Worth township	231-240
CHESTER COUNTY	
Atglen borough	111-120
Avondale borough	111-120
Birmingham township	91-100
Cain township	91-100
Charlestown township	91-100
Coatesville city	101-110
Downingtown borough	91-100
East Bradford township	91-100
East Brandywine township	101-110
East Cain township	91-100
East Coventry township	91-100
East Fallowfield township	101-110
East Goshen township	91-100
East Marlborough township	101-110
East Nantmeal township	91-100
East Nottingham township	111-120
East Pikeland township	81-90

BEST COPY AVAILABLE

MINOR CIVIL DIVISIONS IN THE STATE OF PENNSYLVANIA—Continued

	Freight zone (miles)
Easttown township	81-90
East Vincent township	91-100
East Whiteland township	91-100
Elk township	111-120
Elverson borough	101-110
Franklin township	111-120
Highland township	111-120
Honey Brook borough	101-110
Honeybrook township	101-110
Kennett township	101-110
Kennett Square borough	101-110
London Britain township	111-120
Londonberry township	111-120
London Grove township	111-120
Lower Oxford township	111-120
Malvern borough	81-90
Modena borough	101-110
New Garden township	101-110
Newlin township	101-110
New London township	111-120
North Coventry township	91-100
Oxford borough	111-120
Parkesburg borough	111-120
Penn township	111-120
Pennsbury township	101-110
Phoenixville borough	81-90
Pocopson township	101-110
Sadsbury township	111-120
Schuylkill township	81-90
South Coatesville borough	101-110
South Coventry township	91-100
Spring City borough	81-90
Thornbury township	91-100
Tredyffrin township	81-90
Upper Oxford township	111-120
Upper Uwchlan township	91-100
Uwchlan township	91-100
Valley township	101-110
Wallace township	91-100
Warwick township	91-100
West Bradford township	91-100
West Brandywine township	101-110
West Cain township	101-110
West Chester borough	91-100
West Fallowfield township	111-120
West Goshen township	91-100
West Grove borough	111-120
West Marlborough township	101-110
West Nantmeal township	101-110
West Nottingham township	121-125
West Pikeland township	91-100
West Sadsbury township	111-120
Westtown township	91-100
West Vincent township	91-100
West Whiteland township	91-100
Willistown township	81-90
CLINTON COUNTY	
Allison township	211-220
Avis borough	201-210
Bald Eagle township	211-220
Beech Creek borough	211-220
Beech Creek township	211-220
Castanea township	211-220
Chapman township	221-225
Colebrook township	211-220
Crawford township	191-200
Dunnstable township	201-210
East Keating township	241-250
Flemington borough	211-220
Gallagher township	201-210
Greene township	181-190
Grugan township	211-220
Lamar township	191-200
Leidy township	231-240
Lock Haven city	211-220
Logan township	191-200
Loganton borough	181-190
Mill Hall borough	211-220
Noyes township	226-230
Pine Creek township	201-210
Porter township	201-210
Renovo borough	226-230
South Renovo borough	226-230
Wayne township	191-200
West Keating township	241-250
Woodward township	201-210
COLUMBIA COUNTY	
Ashland borough	131-140
Beaver township	131-140
Benton borough	141-150
Benton township	141-150
Berwick borough	131-140
Bloomsburg town	141-150
Briar Creek borough	131-140
Briar Creek township	131-140
Catawissa borough	131-140
Catawissa township	131-140
Centralia borough	131-140
Cleveland township	131-140
Conyngham township	131-140
Fishingcreek township	131-140
Franklin township	141-150
Greenwood township	141-150
Hemlock township	141-150
Jackson township	151-160
Locust township	131-140
Madison township	141-150
Main township	131-140
Mifflin township	131-140
Millville borough	141-150
Montour township	141-150
Mount Pleasant township	141-150
North Centre township	131-140
Orange township	131-140
Orangeville borough	131-140
Pine township	151-160
Roaringcreek township	131-140
Scott township	131-140
South Centre township	131-140
Stillwater borough	131-140
Sugarloaf township	141-150
CRAWFORD COUNTY	
Athens township	381-390
Bloomfield township	381-390
Centerville borough	381-390
Rockdale township	391-400
Rome township	376-380
Sparta township	376-380
Spartansburg borough	376-380
Steuben township	381-390
Townville borough	381-390
CUMBERLAND COUNTY	
Camp Hill borough	151-160

MINOR CIVIL DIVISIONS IN THE STATE OF PENNSYLVANIA—Continued

	Freight zone (miles)
Carlisle borough	161-170
Cooke township	176-180
Dickinson township	171-175
East Pennsboro township	151-160
Hampden township	151-160
Hopewell township	181-190
Lemoyne borough	151-160
Lower Allen township	151-160
Lower Frankford township	171-175
Lower Mifflin township	181-190
Mechanicsburg borough	161-170
Middlesex township	161-170
Monroe township	161-170
Mount Holly Springs borough	161-170
Newburg borough	181-190
New Cumberland borough	151-160
Newville borough	181-190
North Middleton township	161-170
North Newton township	181-190
Penn township	176-180
Shippensburg borough	181-190
Shippensburg township	181-190
Shiremanstown borough	151-160
Silver Spring township	161-170
Southampton township	181-190
South Middleton township	161-170
South Newton township	181-190
Upper Allen township	161-170
Upper Frankford township	176-180
Upper Mifflin township	181-190
West Fairview borough	151-160
West Pennsboro township	171-175
Wormleysburg borough	151-160
DAUPHIN COUNTY	
Berrysburg borough	151-160
Conewago township	141-150
Dauphin borough	141-150
Derry township	141-150
East Hanover township	131-140
Elizabethville borough	141-150
Gratz borough	141-150
Halifax borough	161-170
Halifax township	161-170
Harrisburg city	151-160
Highspire borough	151-160
Hummelstown borough	141-150
Jackson township	141-150
Jefferson township	141-150
Londonderry township	151-160
Lower Paxton township	141-150
Lower Swatara township	151-160
Lykens borough	141-150
Lykens township	141-150
Middle Paxton township	141-150
Middletown borough	151-160
Mifflin township	151-160
Millersburg borough	151-160
Paxtang borough	151-160
Penbrook borough	141-150
Reed township	161-170
Royalton borough	151-160
Rush township	131-140
South Hanover township	141-150
Steelton borough	151-160
Susquehanna township	141-150
Swatara township	151-160
Uniontown borough	151-160

MINOR CIVIL DIVISIONS IN THE STATE OF PENNSYLVANIA—Continued

	Freight zone (miles)
Upper Paxton township	151-160
Washington township	141-150
Wayne township	151-160
West Hanover township	141-150
Wiconisco township	141-150
Williams township	141-150
Williamstown borough	141-150
DELAWARE COUNTY	
Newtown township	81-90
Radnor township	81-90
ERIE COUNTY	
Amity township	381-390
Concord township	381-390
Corry city	381-390
Edinboro borough	401-410
Elgin borough	381-390
Greenfield township	391-400
Le Boeuf township	391-400
Mill Village borough	391-400
North East borough	391-400
North East township	391-400
Union township	381-390
Union City borough	381-390
Venango township	381-390
Washington township	401-410
Waterford borough	391-400
Waterford township	391-400
Wattsburg borough	381-390
Wayne township	381-390
FRANKLIN COUNTY	
Antrim township	201-210
Chambersburg borough	191-200
Fannett township	191-200
Greencastle borough	201-210
Greene township	191-200
Guilford township	191-200
Hamilton township	201-210
Letterkenny township	191-200
Lurgan township	191-200
Mercersburg borough	211-220
Metal township	201-210
Mont Alto borough	191-200
Montgomery township	211-220
Orrstown borough	191-200
Peters township	211-220
Quincy township	191-200
St. Thomas township	201-210
Shippensburg borough	181-190
Southampton township	191-200
Warren township	221-225
Washington township	191-200
Waynesboro borough	191-200
FULTON COUNTY	
Ayr township	221-225
Belfast township	226-230
Bethel township	231-240
Brush Creek township	226-230
Dublin township	211-220
Licking Creek township	211-220
McConnellsburg borough	221-225
Taylor township	211-220
Thompson township	231-240
Todd township	211-220
Union township	231-240
Wells township	221-225

MINOR CIVIL DIVISIONS IN THE STATE OF PENNSYLVANIA—Continued

	Freight zone (miles)
HUNTINGDON COUNTY	
Alexandria borough	231-240
Barree township	221-225
Birmingham borough	231-240
Brady township	226-230
Broad Top City borough	231-240
Carbon township	231-240
Cass township	226-230
Cassville borough	226-230
Clay township	221-225
Coalmont borough	231-240
Cromwell township	211-220
Dublin township	201-210
Dudley borough	231-240
Franklin township	231-240
Henderson township	226-230
Hopewell township	231-240
Huntingdon borough	231-240
Jackson township	211-220
Juniata township	231-240
Lincoln township	231-240
Logan township	231-240
Mapleton borough	226-230
Marklesburg borough	231-240
Mill Creek borough	226-230
Miller township	221-225
Morris township	231-240
Mount Union borough	226-230
Oneida township	226-230
Orbisonia borough	211-220
Penn township	231-240
Petersburg borough	231-240
Porter township	231-240
Rockhill borough	211-220
Saltillo borough	221-225
Shade Gap borough	201-210
Shirley township	221-225
Shirleysburg borough	221-225
Smithfield township	231-240
Springfield township	211-220
Spruce Creek township	231-240
Tell township	201-210
Three Springs borough	221-225
Tod township	226-230
Union township	226-230
Walker township	231-240
Warriorsmark township	231-240
West township	226-230
Wood township	221-225
JUNIATA COUNTY	
Beale township	191-200
Delaware township	181-190
Fayette township	181-190
Fermanagh township	191-200
Greenwood township	181-190
Lack township	191-200
Mifflin borough	191-200
Mifflintown borough	191-200
Milford township	191-200
Monroe township	181-190
Port Royal borough	191-200
Spruce Hill township	191-200
Susquehanna township	176-180
Thompsontown borough	181-190
Turbett township	191-200
Tuscarora township	191-200
Walker township	191-200
LACKAWANNA COUNTY	
Abington township	111-120
Archbald borough	101-110
Benton township	111-120
Blakely borough	101-110
Carbondale city	101-110
Carbondale township	101-110
Clarks Green borough	111-120
Clarks Summit borough	111-120
Clifton township	101-110
Covington township	101-110
Dalton borough	121-125
Dickson City borough	101-110
Dunmore borough	101-110
Elmhurst township	101-110
Fell township	101-110
Glenburn township	121-125
Greenfield township	101-110
Jefferson township	91-100
Jermyn borough	101-110
La Plume township	121-125
Lehigh township	91-100
Madison township	91-100
Mayfield borough	101-110
Moosic borough	111-120
Moscow borough	101-110
Newton township	111-120
North Abington township	111-120
Old Forge borough	111-120
Olyphant borough	101-110
Ransom township	111-120
Roaring Brook township	101-110
Scott township	111-120
Scranton city	101-110
South Abington township	111-120
Spring Brook township	101-110
Taylor borough	111-120
Throop borough	101-110
Vandling borough	101-110
West Abington township	126-130
Winton borough	101-110
LANCASTER COUNTY	
Adamstown borough	111-120
Akron borough	121-125
Bart township	121-125
Brecknock township	111-120
Caernarvon township	111-120
Christiana borough	111-120
Clay township	121-125
Colerain township	121-125
Columbia borough	141-150
Conestoga township	131-140
Conoy township	151-160
Denver borough	111-120
Drumore township	131-140
Earl township	121-125
East Cocalico township	111-120
East Donegal township	141-150
East Drumore township	126-130
East Earl township	111-120
East Hempfield township	131-140
East Lampeter township	126-130
East Petersburg borough	131-140
Eden township	121-125
Elizabeth township	126-130
Elizabethtown borough	141-150
Ephrata borough	121-125

MINOR CIVIL DIVISIONS IN THE STATE OF PENNSYLVANIA—Continued

	Freight zone (miles)
Ephrata township	121-125
Fulton township	131-140
Lancaster city	131-140
Lancaster township	131-140
Leacock township	121-125
Lititz borough	126-130
Little Britain township	126-130
Manheim borough	131-140
Manheim township	131-140
Manor township	131-140
Marietta borough	141-150
Martic township	131-140
Millersville borough	131-140
Mount Joy borough	141-150
Mount Joy township	141-150
Mountville borough	131-140
New Holland borough	121-125
Paradise township	121-125
Penn township	131-140
Pequea township	131-140
Providence township	126-130
Quarryville borough	121-125
Rapho township	131-140
Sadsbury township	111-120
Salisbury township	111-120
Strasburg borough	126-130
Strasburg township	126-130
Terre Hill borough	111-120
Upper Leacock township	121-125
Warwick township	126-130
Washington borough	141-150
West Cocalico township	111-120
West Donegal township	141-150
West Earl township	121-125
West Hempfield township	131-140
West Lampeter township	131-140
LEBANON COUNTY	
Annville township	131-140
Bethel township	121-125
Cleona borough	131-140
Cold Spring township	131-140
Cornwall borough	131-140
East Hanover township	131-140
Heidelberg township	121-125
Jackson township	121-125
Jonestown borough	126-130
Lebanon city	126-130
Millcreek township	111-120
Mount Gretna borough	131-140
Myerstown borough	121-125
North Annville township	131-140
North Cornwall township	131-140
North Lebanon township	126-130
North Londonderry township	131-140
Palmyra borough	131-140
Richland borough	126-130
South Annville township	131-140
South Lebanon township	126-130
South Londonderry township	131-140
Swatara township	126-130
Union township	126-130
West Cornwall township	131-140
West Lebanon township	131-140
LEHIGH COUNTY	
Alburtis borough	76-80
Allentown city	71-75
Bethlehem city	61-70
Catasauqua borough	71-75
Coopersburg borough	71-75
Coplay borough	76-80
Emmaus borough	76-80
Fountain Hill borough	71-75
Hanover township	61-70
Heidelberg township	81-90
Lower Macungie township	76-80
Lower Milford township	71-75
Lowhill township	81-90
Lynn township	81-90
Macungie borough	76-80
North Whitehall township	76-80
Salisbury township	76-80
Slatington borough	81-90
South Whitehall township	76-80
Upper Macungie township	81-90
Upper Milford township	71-75
Upper Saucon township	71-75
Washington township	81-90
Weisenberg township	81-90
Whitehall township	71-75
LUZERNE COUNTY	
Ashley borough	111-120
Avoca borough	111-120
Bear Creek township	101-110
Black Creek township	121-125
Buck township	91-100
Butler township	111-120
Conyngham borough	111-120
Conyngham township	121-125
Courtdale borough	111-120
Dallas borough	121-125
Dallas township	121-125
Dennison township	101-110
Dorrance township	111-120
Dupont borough	111-120
Duryea borough	111-120
Edwardsville borough	111-120
Exeter borough	126-130
Exeter township	126-130
Fairmount township	131-140
Fairview township	111-120
Forty Fort borough	111-120
Foster township	101-110
Franklin township	126-130
Freeland borough	101-110
Hanover township	111-120
Hazle township	111-120
Hazleton city	111-120
Hollenback township	111-120
Hughestown borough	111-120
Hunlock township	126-130
Huntington township	131-140
Jackson township	121-125
Jeddo borough	101-110
Jenkins township	101-110
Kingston borough	111-120
Kingston township	111-120
Laflin borough	111-120
Lake township	126-130
Larksville borough	121-125
Laurel Run borough	111-120
Lehman township	126-130
Luzerne borough	111-120
Nanticoke city	126-130
Nescopeck borough	121-125

BEST COPY AVAILABLE

MINOR CIVIL DIVISIONS IN THE STATE OF PENNSYLVANIA—Continued

	Freight zone (miles)
Nescopeck township	121-125
New Columbus borough	131-140
Newport township	121-125
Nuangola borough	111-120
Pittstown city	111-120
Pittstown township	111-120
Plains township	111-120
Plymouth borough	121-125
Plymouth township	121-125
Pringle borough	111-120
Rice township	111-120
Ross township	131-140
Salem township	131-140
Shickshinny borough	131-140
Slocum township	111-120
Sugarloaf township	111-120
Sugar Notch borough	111-120
Swoyersville borough	111-120
Union township	131-140
Warrior Run borough	111-120
West Hazleton borough	111-120
West Pittston borough	111-120
West Wyoming borough	111-120
White Haven borough	101-110
Wilkes-Barre city	111-120
Wilkes-Barre township	111-120
Wright township	101-110
Wyoming borough	111-120
Yatesville borough	111-120
LYCOMING COUNTY	
Anthony township	201-210
Armstrong township	181-190
Bastress township	191-200
Brady township	171-175
Brown township	226-230
Cascade township	181-190
Clinton township	176-180
Cogan House township	201-210
Cummings township	201-210
Duboistown borough	181-190
Eldred township	181-190
Fairfield township	176-180
Franklin township	151-160
Gamble township	181-190
Hepburn township	191-200
Hugesville borough	161-170
Jackson township	201-210
Jersey Shore borough	201-210
Jordan township	151-160
Lewis township	191-200
Limestone township	191-200
Loyalsock township	181-190
Lycoming township	191-200
McHenry township	211-220
McIntyre township	191-200
McNett township	181-190
Mifflin township	201-210
Mill Creek township	171-175
Montgomery borough	176-180
Montoursville borough	176-180
Moreland township	161-170
Muncy borough	161-170
Muncy township	171-175
Muncy Creek township	161-170
Nippenose township	191-200
Old Lycoming township	191-200
Penn township	161-170
Piatt township	191-200
Picture Rocks borough	161-170
Pine township	211-220
Plunketts Creek township	176-180
Porter township	201-210
Salladasburg borough	201-210
Shrewsbury township	161-170
South Williamsport borough	181-190
Susquehanna township	191-200
Upper Fairfield township	176-180
Washington township	176-180
Watson township	201-210
Williamsport city	181-190
Wolf township	161-170
Woodward township	191-200
MC KEAN COUNTY	
Annin township	291-300
Bradford city	311-320
Bradford township	311-320
Ceres township	291-300
Corydon township	326-330
Eldred borough	301-310
Eldred township	301-310
Foster township	311-320
Hamilton township	326-330
Hamlin township	311-320
Kane borough	326-330
Keating township	301-310
Lafayette township	311-320
Lewis Run borough	311-320
Liberty township	291-300
Mount Jewett borough	311-320
Norwich township	291-300
Otto township	301-310
Port Allegany borough	291-300
Sergeant township	301-310
Smethport borough	301-310
Wetmore township	326-330
MIFFLIN COUNTY	
Armagh township	191-200
Bratton township	211-220
Brown township	201-210
Burnham borough	201-210
Decatur township	191-200
Derry township	201-210
Granville township	201-210
Kistler borough	221-225
Lewistown borough	201-210
McVeytown borough	211-220
Menno township	211-220
Newton Hamilton borough	221-225
Oliver township	211-220
Union township	201-210
Wayne township	221-225
MONROE COUNTY	
Barrett township	76-80
Chestnuthill township	81-90
Coolbaugh township	81-90
Delaware Water Gap borough	61-70
East Stroudsburg borough	61-70
Eldred township	81-90
Hamilton township	71-75
Jackson township	76-80
Middle Smithfield township	71-75
Mount Pocono borough	81-90
Paradise township	71-75

BEST COPY AVAILABLE

MINOR CIVIL DIVISIONS IN THE STATE OF PENNSYLVANIA—Continued

	Freight zone (miles)
Pocono township	76-80
Polk township	81-90
Price township	71-75
Ross township	71-75
Smithfield township	61-70
Stroud township	61-70
Stroudsburg borough	61-70
Tobyhanna township	81-90
Tunkhannock township	81-90
MONTGOMERY COUNTY	
Abington township	61-70
Ambler borough	71-75
Bridgeport borough	76-80
Bryn Athyn borough	61-70
Cheltenham township	76-80
Collegeville borough	81-90
Conshohocken borough	76-80
Douglass township	81-90
East Greenville borough	81-90
East Norriton township	71-75
Franconia township	71-75
Greenlane borough	76-80
Hatboro borough	61-70
Hatfield borough	61-70
Hatfield township	61-70
Horsham township	61-70
Jenkintown borough	61-70
Lansdale borough	61-70
Limerick township	81-90
Lower Frederick township	81-90
Lower Gwynedd township	61-70
Lower Merion township	81-90
Lower Moreland township	61-70
Lower Pottsgrove township	81-90
Lower Providence township	76-80
Lower Salford township	71-75
Marlborough township	71-75
Montgomery township	61-70
Narberth borough	81-90
New Hanover township	81-90
Norristown borough	76-80
North Wales borough	61-70
Pennsburg borough	81-90
Perkiomen township	81-90
Plymouth township	76-80
Pottstown borough	91-100
Red Hill borough	81-90
Rockledge borough	61-70
Royersford borough	81-90
Salford township	71-75
Schwenksville borough	81-90
Skippack township	76-80
Souderton borough	71-75
Springfield township	76-80
Telford borough	71-75
Towamencin township	61-70
Trappe borough	81-90
Upper Dublin township	61-70
Upper Frederick township	81-90
Upper Gwynedd township	61-70
Upper Hanover township	81-90
Upper Merion township	76-80
Upper Moreland township	61-70
Upper Pottsgrove township	91-100
Upper Providence township	81-90
Upper Salford township	76-80
West Conshohocken borough	76-80
West Norriton township	76-80
West Pottsgrove township	91-100
Whitemarsh township	71-75
Whitpain township	71-75
Worcester township	71-75
MONTOUR COUNTY	
Anthony township	151-160
Cooper township	141-150
Danville borough	141-150
Derry township	151-160
Liberty township	151-160
Limestone township	151-160
Mahoning township	141-150
Mayberry township	141-150
Valley township	151-160
Washingtonville borough	151-160
West Hemlock township	141-150
NORTHAMPTON COUNTY	
Allen township	76-80
Bangor borough	51-60
Bath borough	61-70
Bethlehem city	61-70
Bethlehem township	61-70
Bushkill township	61-70
Chapman borough	71-75
East Allen township	61-70
East Bangor borough	51-60
Easton city	51-60
Forks township	61-70
Freemansburg borough	61-70
Glendon borough	61-70
Hanover township	71-75
Hellertown borough	61-70
Lehigh township	81-90
Lower Mount Bethel township	51-60
Lower Nazareth township	61-70
Lower Saucon township	61-70
Moore township	71-75
Nazareth borough	61-70
Northampton borough	76-80
North Catasauqua borough	71-75
Palmer township	61-70
Pen Argyl borough	61-70
Plainfield township	61-70
Portland borough	51-60
Roseto borough	51-60
Stockertown borough	61-70
Tatamy borough	61-70
Upper Mount Bethel township	51-60
Upper Nazareth township	61-70
Walnutport borough	81-90
Washington township	51-60
West Easton borough	61-70
Williams township	61-70
Wilson borough	61-70
Wind Gap borough	61-70
NORTHUMBERLAND COUNTY	
Coal township	141-150
Delaware township	161-170
East Cameron township	131-140
East Chillisquaque township	151-160
Herndon borough	151-160
Jackson township	151-160
Jordan township	151-160
Kulpmont borough	131-140
Lewis township	161-170

MINOR CIVIL DIVISIONS IN THE STATE OF PENNSYLVANIA—Continued

	Freight zone (miles)
Little Mahanoy township	151-160
Lower Augusta township	151-160
Lower Mahanoy township	151-160
McEwensville borough	161-170
Marion Heights borough	131-140
Milton borough	161-170
Mount Carmel borough	131-140
Mount Carmel township	131-140
Northumberland borough	151-160
Point township	151-160
Ralpho township	141-150
Riverside borough	141-150
Rockefeller township	151-160
Rush township	141-150
Shamokin city	141-150
Shamokin township	141-150
Snydertown borough	141-150
Sunbury city	151-160
Turbotville borough	161-170
Turbut township	161-170
Upper Augusta township	151-160
Upper Mahanoy township	141-150
Washington township	151-160
Watsontown borough	161-170
West Cameron township	141-150
West Chillisquaque township	161-170
Zerbe township	141-150
PERRY COUNTY	
Blain borough	181-190
Bloomfield borough	176-180
Buffalo township	171-175
Carroll township	161-170
Centre township	171-175
Duncannon borough	161-170
Greenwood township	181-190
Howe township	176-180
Jackson township	181-190
Juniata township	176-180
Landisburg borough	176-180
Liverpool borough	176-180
Liverpool township	176-180
Marysville borough	151-160
Miller township	171-175
Millerstown borough	181-190
New Buffalo borough	171-175
Newport borough	176-180
Northeast Madison township	181-190
Oliver township	176-180
Penn township	161-170
Rye township	161-170
Saville township	181-190
Southwest Madison township	181-190
Spring township	171-175
Toboyne township	191-200
Tuscarora township	181-190
Tyrone township	176-180
Watts township	171-175
Wheatfield township	171-175
PIKE COUNTY	
Blooming Grove township	61-70
Delaware township	61-70
Dingman township	51-60
Greene township	71-75
Lackawaxen township	61-70
Lehman township	61-70
Matamoras borough	51-60
Milford borough	51-60

MINOR CIVIL DIVISIONS IN THE STATE OF PENNSYLVANIA—Continued

	Freight zone (miles)
Milford township	51-60
Palmyra township	76-80
Porter township	61-70
Shohola township	61-70
Westfall township	51-60
POTTER COUNTY	
Abbott township	241-250
Allegany township	261-270
Austin borough	281-290
Bingham township	251-260
Clara township	281-290
Coudersport borough	271-275
Eulalia township	271-275
Galeton borough	241-250
Genesee township	261-270
Harrison township	251-260
Hebron township	271-275
Hector township	241-250
Homer township	276-280
Keating township	281-290
Lewisville borough	251-260
Oswayo borough	271-275
Oswayo township	271-275
Pike township	241-250
Pleasant Valley township	281-290
Portage township	276-280
Roulette township	281-290
Sharon township	281-290
Shinglehouse borough	281-290
Stewardson township	231-240
Summit township	261-270
Sweden township	261-270
Sylvania township	276-280
Ulysses township	251-260
West Branch township	241-250
Wharton township	251-260
SCHUYLKILL COUNTY	
Ashland borough	126-130
Auburn borough	101-110
Barry township	131-140
Blythe township	111-120
Branch township	121-125
Butler township	126-130
Cass township	126-130
Coaldale borough	101-110
Cressona borough	111-120
Deer Lake borough	101-110
Delano township	111-120
East Brunswick township	101-110
East Norwegian township	111-120
East Union township	121-125
Eldred township	131-140
Foster township	126-130
Frackville borough	121-125
Frailey township	131-140
Gilberton borough	121-125
Girardville borough	126-130
Gordon borough	126-130
Hegins township	131-140
Hubley township	141-150
Kline township	111-120
Landingville borough	101-110
McAdoo borough	111-120
Mahanoy township	111-120
Mahanoy City borough	111-120
Mechanicsville borough	111-120
Middleport borough	111-120

MINOR CIVIL DIVISIONS IN THE STATE OF PENNSYLVANIA—Continued

	Freight zone (miles)
Minersville borough	126-130
Mount Carbon borough	111-120
New Castle township	121-125
New Philadelphia borough	111-120
New Ringgold borough	101-110
North Manheim township	111-120
North Union township	126-130
Norwegian township	111-120
Orwigsburg borough	101-110
Palo Alto borough	111-120
Pine Grove borough	121-125
Pine Grove township	121-125
Port Carbon borough	111-120
Port Clinton borough	101-110
Porter township	131-140
Pottsville city	111-120
Rahn township	101-110
Reilly township	126-130
Ringtown borough	126-130
Rush township	111-120
Ryan township	111-120
St. Clair borough	111-120
Schuylkill township	111-120
Schuylkill Haven borough	111-120
Shenandoah borough	121-125
South Manheim township	101-110
Tamaqua borough	101-110
Tower City borough	131-140
Tremont borough	126-130
Tremont township	126-130
Union township	126-130
Upper Mahantango township	141-150
Walker township	101-110
Washington township	111-120
Wayne township	111-120
West Brunswick township	101-110
West Mahanoy township	121-125
West Penn township	101-110
SNYDER COUNTY	
Adams township	181-190
Beaver township	181-190
Beavertown borough	181-190
Centre township	171-175
Chapman township	171-175
Franklin township	171-175
Freeburg borough	161-170
Jackson township	161-170
Middleburg borough	171-175
Middlecreek township	161-170
Monroe township	161-170
Penn township	161-170
Perry township	171-175
Selinsgrove borough	161-170
Shamokin Dam borough	161-170
Spring township	181-190
Union township	161-170
Washington township	161-170
West Beaver township	181-190
West Perry township	176-180
SULLIVAN COUNTY	
Cherry township	151-160
Colley township	141-150
Davidson township	141-150
Dushore borough	151-160
Eagles Mere borough	161-170
Elkland township	176-180
Forks township	161-170
Forksville borough	161-170
Fox township	181-190
Hillsgrove township	176-180
Laporte borough	151-160
Laporte township	151-160
Shrewsbury township	161-170
SUSQUEHANNA COUNTY	
Apolacon township	151-160
Ararat township	111-120
Auburn township	131-140
Bridgewater township	131-140
Brooklyn township	131-140
Choconut township	151-160
Clifford township	101-110
Dimock township	131-140
Forest City borough	101-110
Forest Lake township	141-150
Franklin township	131-140
Friendsville borough	151-160
Gibson township	111-120
Great Bend borough	131-140
Great Bend township	131-140
Hallstead borough	131-140
Harford township	121-125
Harmony township	121-125
Herrick township	111-120
Hop Bottom borough	126-130
Jackson township	121-125
Jessup township	141-150
Lanesboro borough	121-125
Lathrop township	126-130
Lenox township	111-120
Liberty township	141-150
Little Meadows borough	151-160
Middletown township	151-160
Montrose borough	131-140
New Milford borough	126-130
New Milford township	126-130
Oakland borough	126-130
Oakland township	126-130
Rush township	141-150
Silver Lake township	141-150
Springville township	131-140
Susquehanna Depot borough	126-130
Thompson borough	111-120
Thompson township	111-120
Uniondale borough	111-120
TIOGA COUNTY	
Bloss township	201-210
Blossburg borough	201-210
Brookfield township	241-250
Charleston township	211-220
Chatham township	226-230
Clymer township	231-240
Covington township	201-210
Deerfield township	231-240
Delmar township	221-225
Duncan township	211-220
Elk township	231-240
Elkland borough	231-240
Elkland township	231-240
Farmington township	221-225
Gaines township	231-240
Hamilton township	201-210
Jackson township	201-210
Knoxville borough	231-240
Lawrence township	211-220

MINOR CIVIL DIVISIONS IN THE STATE OF PENNSYLVANIA—Continued

	Freight zone (miles)
Lawrenceville borough	211-220
Liberty borough	201-210
Liberty township	201-210
Mansfield borough	201-210
Middlebury township	211-220
Morris township	211-220
Nelson township	226-230
Osceola township	231-240
Putnam township	201-210
Richmond township	201-210
Roseville borough	201-210
Rutland township	201-210
Shippen township	226-230
Sullivan township	191-200
Tioga borough	211-220
Tioga township	211-220
Union township	191-200
Ward township	191-200
Wellsboro borough	226-230
Westfield borough	241-250
Westfield township	241-250
UNION COUNTY	
Buffalo township	161-170
East Buffalo township	161-170
Gregg township	171-175
Hartleton borough	181-190
Hartley township	181-190
Kelly township	161-170
Lewis township	176-180
Lewisburg borough	161-170
Limestone township	171-175
Mifflinburg borough	171-175
New Berlin borough	171-175
Union township	161-170
West Buffalo township	171-175
White Deer township	161-170
WARREN COUNTY	
Bear Lake borough	361-370
Brokenstraw township	351-360
Cherry Grove township	341-350
Clarendon borough	341-350
Columbus township	371-375
Conewango township	351-360
Corydon township	331-340
Deerfield township	361-370
Eldred township	371-375
Elk township	341-350
Farmington township	351-360
Freehold township	361-370
Glade township	351-360
Kinzua township	331-340
Limestone township	361-370
Mead township	341-350
Pine Grove township	351-360
Pittsfield township	361-370
Pleasant township	351-360
Sheffield township	331-340
Southwest township	371-375
Spring Creek township	371-375
Sugar Grove borough	361-370
Sugar Grove township	361-370
Tidioute borough	361-370
Triumph township	361-370
Warren borough	351-360
Watson township	351-360
Youngsville borough	351-360
Cornplanter Indian Reservation	341-350

MINOR CIVIL DIVISIONS IN THE STATE OF PENNSYLVANIA—Continued

	Freight zone (miles)
WAYNE COUNTY	
Berlin township	81-90
Bethany borough	91-100
Buckingham township	111-120
Canaan township	91-100
Cherry Ridge township	81-90
Clinton township	91-100
Damascus township	81-90
Dreher township	91-100
Dyberry township	91-100
Hawley borough	81-90
Honesdale borough	81-90
Lake township	81-90
Lebanon township	91-100
Lehigh township	91-100
Manchester township	101-110
Mount Pleasant township	101-110
Oregon township	91-100
Palmyra township	81-90
Paupack township	81-90
Preston township	111-120
Prompton borough	91-100
Salem township	91-100
Scott township	111-120
South Canaan township	91-100
Starrucca borough	111-120
Sterling township	91-100
Texas township	81-90
Waymart borough	91-100
WYOMING COUNTY	
Braintrim township	141-150
Clinton township	126-130
Eaton township	126-130
Exeter township	126-130
Factoryville borough	126-130
Falls township	121-125
Forkston township	131-140
Laceyville borough	141-150
Lemon township	126-130
Mehoopany township	141-150
Meshoppen borough	141-150
Meshoppen township	141-150
Monroe township	126-130
Nicholson borough	121-125
Nicholson township	121-125
North Branch township	141-150
Northmoreland township	126-130
Noxen township	131-140
Overfield township	126-130
Tunkhannock borough	126-130
Tunkhannock township	126-130
Washington township	131-140
Windham township	141-150
YORK COUNTY	
Carroll township	161-170
Chanceford township	141-150
Codorus township	161-170
Conewago township	151-160
Cross Roads borough	151-160
Dallastown borough	151-160
Delta borough	141-150
Dillsburg borough	161-170
Dover borough	161-170
Dover township	161-170
East Hopewell township	151-160
East Manchester township	151-160

MINOR CIVIL DIVISIONS IN THE STATE OF PENNSYLVANIA—Continued

	Freight zone (miles)
East Prospect borough	141-150
Fairview township	151-160
Fawn township	141-150
Fawn Grove borough	141-150
Felton borough	151-160
Franklin township	161-170
Franklintown borough	161-170
Glen Rock borough	161-170
Goldsboro borough	151-160
Hallam borough	141-150
Hanover borough	171-175
Heidelberg township	161-170
Hellam township	141-150
Hopewell township	151-160
Jackson township	161-170
Jacobus borough	151-160
Jefferson borough	161-170
Lewisberry borough	151-160
Loganville borough	151-160
Lower Chanceford township	141-150
Lower Windsor township	141-150
Manchester borough	151-160
Manchester township	151-160
Manheim township	161-170
Monaghan township	161-170
Mount Wolf borough	151-160
New Freedom borough	161-170
New Salem borough	151-160
Newberry township	151-160
North Codorus township	151-160
North Hopewell township	151-160
North York borough	151-160
Paradise township	161-170
Peach Bottom township	141-150
Penn township	171-175
Railroad borough	161-170
Red Lion borough	151-160
Seven Valleys borough	151-160
Shrewsbury borough	161-170
Shrewsbury township	161-170
Springettsbury township	151-160
Springfield township	151-160
Spring Garden township	151-160
Spring Grove borough	161-170
Stewartstown borough	151-160
Warrington township	161-170
Washington township	161-170
Wellsville borough	161-170
West Manchester township	151-160
West Manheim township	171-175
West York borough	151-160
Windsor borough	151-160
Windsor township	151-160
Winterstown borough	151-160
Wrightsville borough	141-150
Yoe borough	151-160
York city	151-160
York township	151-160
Yorkana borough	141-150
York Haven borough	151-160

MINOR CIVIL DIVISIONS IN THE STATE OF VERMONT

	Freight zone (miles)
ADDISON COUNTY	
Addison town	231-240
Bridport town	231-240
Bristol town	241-250
Cornwall town	231-240
Ferrisburg town	251-260
Goshen town	241-250
Granville town	251-260
Hancock town	251-260
Leicester town	231-240
Lincoln town	251-260
Middlebury town	231-240
Monkton town	251-260
New Haven town	241-250
Orwell town	211-220
Panton town	241-250
Ripton town	241-250
Salisbury town	231-240
Shoreham town	226-230
Starksboro town	261-270
Vergennes city	251-260
Waltham town	241-250
Weybridge town	241-250
Whiting town	226-230
BENNINGTON COUNTY	
Arlington town	176-180
Bennington town	161-170
Dorset town	191-200
Landgrove town	201-210
Manchester town	181-190
Peru town	191-200
Pownal town	151-160
Readsboro town	161-170
Rupert town	181-190
Sandgate town	176-180
Searsburg town	176-180
Shaftsbury town	161-170
Stamford town	151-160
Sunderland town	181-190
Winhall town	191-200
Woodford town	161-170
Unorganized territory (formerly Glastenbury town)	176-180
CHITTENDEN COUNTY	
Bolton town	281-290
Buels gore	261-270
Burlington city	271-275
Charlotte town	251-260
Colchester town	276-280
Essex town	276-280
Hinesburg town	261-270
Huntington town	261-270
Jericho town	281-290
Milton town	281-290
Richmond town	271-275
St. George town	271-275
Shelburne town	261-270
South Burlington town	261-270
Underhill town	281-290
Westford town	281-290
Williston town	271-275
Winooski city	276-280
RUTLAND COUNTY	
Benson town	211-220
Brandon town	231-240
Castleton town	211-220

MINOR CIVIL DIVISIONS IN THE STATE OF VERMONT—Continued

	Freight zone (miles)
Chittenden town	231-240
Clarendon town	211-220
Danby town	201-210
Fair Haven town	201-210
Hubbardton town	211-220
Ira town	211-220
Mendon town	226-230
Middletown Springs town	201-210
Mount Holly town	211-220
Mount Tabor town	201-210
Pawlet town	191-200
Pittsfield town	231-240
Pittsford town	226-230
Poultney town	201-210
Proctor town	221-225
Rutland city	221-225
Rutland town	221-225
Sherburne town	226-230
Shrewsbury town	211-220
Sudbury town	221-225
Tinmouth town	201-210
Wallingford town	201-210
Wells town	201-210
West Haven town	201-210
West Rutland town	211-220

COUNTY IN THE STATE OF VIRGINIA

Clarke	251-260

MINOR CIVIL DIVISIONS IN THE STATE OF WEST VIRGINIA

BERKELEY COUNTY	
Arden district	241-250
Falling Waters district	231-240
Gerrardstown district	251-260
Hedgesville district	241-250
Martinsburg district	241-250
Mill Creek district	251-260
Opequon district	241-250
JEFFERSON COUNTY	
Charles Town district	241-250
Harpers Ferry district	241-250
Kabletown district	251-260
Middleway district	241-250
Shepherdstown district	241-250

[26 FR 10859, Nov. 21, 1961. Redesignated at 26 FR 12752, Dec. 30, 1961]

PART 1004—MILK IN THE MIDDLE ATLANTIC MARKETING AREA

Subpart—Order Regulating Handling

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1004.120 Procedure for requesting refunds.
1004.121 Duties of the market administrator.
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AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

SOURCE: 40 FR 18753, Apr. 30, 1975, unless otherwise noted.

Subpart—Order Regulating Handling

GENERAL PROVISIONS

§ 1004.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1004.2 Middle Atlantic marketing area.

"Middle Atlantic marketing area" (hereinafter called the "marketing area") means all territory within the boundaries of the following places, including piers, docks and wharves and territory within such boundaries occupied by government (municipal, State, or Federal) reservations, installations, institutions or other similar establishments:

(a) The District of Columbia.

(b) The State of Delaware.

(c) In the State of Maryland:

(1) The counties of:

Anne Arundel, Baltimore, Calvert, Caroline, Carroll, Cecil, Charles, Dorchester, Frederick, Harford, Howard, Kent, Montgomery, Prince Georges, Queen Annes, Somerset, St. Marys, Talbot, Washington, Wicomico, Worcester.

(2) The city of Baltimore.

(d) In the State of New Jersey:

(1) The counties of:

Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Salem.

(2) In Ocean County:

(i) The townships of:

Eagleswood, Lacey, Long Beach, Little Egg Harbor, Ocean, Stafford, Union.

(ii) The boroughs of:

Barnegat Light, Beach Haven, Harvey Cedars, Ship Bottom, Tuckerton.

(e) In the State of Pennsylvania, the counties of:

Adams, Bucks, Chester, Cumberland, Dauphin, Delaware, Franklin, Fulton, Juniata, Lancaster, Lebanon, Montgomery, Perry, Philadelphia, York.

(f) In the State of Virginia:

(1) The counties of:

Arlington, Fairfax, Loudoun, Prince William.

(2) The cities of:

Alexandria, Falls Church, Fairfax.

EFFECTIVE DATE NOTE: Paragraphs (d)(2)(ii) and (e) were revised at 50 FR 45596, Nov. 1, 1985, effective December 1, 1985. At 50 FR 49674, Dec. 4, 1985, the effective date was suspended until further notice. For the convenience of the user, the revised text appears below.

§ 1004.2 Middle Atlantic marketing area.

(d) * * *

(2) * * *

(ii) The boroughs of:

Barnegat Light, Beach Haven, Harvey Cedars, Ship Bottom, Surf City, Tuckerton.

(e) In the State of Pennsylvania, the counties of:

Adams, Berks, Bucks, Carbon, Chester, Cumberland, Dauphin, Delaware, Franklin, Fulton, Juniata, Lancaster, Lebanon, Lehigh, Montgomery, Northampton, Perry, Philadelphia, Schuylkill, York.

* * * * *

§ 1004.3 Route disposition.

"Route disposition" means any delivery of a fluid milk product from a plant to a retail or wholesale outlet (including any delivery through a distribution depot, by a vendor, from a plant store or through a vending machine) except any delivery to a plant.

§ 1004.4 Plant.

Except as specifically provided in § 1004.7(d)(2), "plant" means the land and buildings together with their surroundings, facilities and equipment, whether owned or operated by one or more persons, constituting a single operating unit or establishment for the receiving, processing or packaging of milk or milk products (including filled milk). However, a separate facility used only for the purpose of transferring bulk milk from one tank truck to another tank truck or only as a distribution depot for fluid milk products in transit for route distribution shall not be included under this definition.

[50 FR 16453, Apr. 26, 1985]

§§ 1004.5—1004.6 [Reserved]

§ 1004.7 Pool plant.

Except as provided in paragraph (f) of this section, "pool plant" means a plant (except a producer-handler plant or the plant of a handler pursuant to § 1004.9(e)) specified in paragraphs (a) through (e) of this section.

(a) A plant from which during the month a volume not less than 40 percent in the months of September through February, and 30 percent in the months of March through August, of its receipts described in paragraph (a) (1) or (2) of this section is disposed of as Class I milk (except filled milk) and a volume not less than 15 percent of such receipts is disposed of as route disposition (other than as filled milk) in the marketing area.

(1) Milk received at such plant directly from dairy farmers (including milk diverted as producer milk pursuant to § 1004.12, by either the plant operator or by a cooperative association, but excluding the milk of dairy farmers for other markets) and from a cooperative in its capacity as a handler pursuant to § 1004.9(c); or

(2) In the case of a plant with no receipts described in paragraph (a)(1) of this section, receipts of fluid milk products (other than filled milk) from other plants.

(3) A plant which meets the "pool plant" requirements of this paragraph during any month shall retain its pool status during the immediately succeeding two months as long as the plant continues to meet the 15-percent in-area Class I disposition requirement, unless written application is filed by the plant operator with the market administrator on or before the first day of any such month requesting that the plant be designated a nonpool plant for such month and each subsequent month during which it does not otherwise qualify pursuant to this paragraph.

(4) A plant's status as an other order plant pursuant to paragraph (f) of this section shall not be affected by the provisions of paragraph (a)(3) of this section.

(b) Any plant not meeting the conditions of paragraph (a) of this section from which during the month a quantity of fluid milk products (other than filled milk) not less than the applicable percentage (as specified in paragraph (b)(1) of this section) of such plant's receipts of milk from dairy farmers (including milk diverted as producer milk pursuant to § 1004.12 by either the plant operator or by a cooperative association) and from a cooperative association in its capacity as a handler pursuant to § 1004.9(c) is moved to a plant(s) meeting the percentage disposition requirements specified in paragraph (a) of this section with respect to its total receipts of fluid milk products (other than filled milk) from dairy farmers, cooperative associations as handlers pursuant to § 1004.9(c) and from other plants. However, a plant shall not qualify pursuant to this paragraph in any month in which a greater proportion of its qualifying shipments are made to a plant(s) regulated under another Federal order than to plants regulated under this order.

(1) The applicable percentage for the purpose of this paragraph shall be:

(i) 50 percent for any month of September through February; and

(ii) 40 percent for any month of March through August.

(c) [Reserved]

(d) A plant operated in accordance with paragraph (d) (1), (2) or (3) of this section, subject to the requirement of paragraph (d)(4) of this section.

(1) A reserve processing plant operated by a cooperative association at which milk from dairy farmers is received if the total of fluid milk products (except filled milk) transferred from such cooperative association plant(s) to, and the milk of member producers physically received at, pool plants pursuant to § 1004.7(a) is not less than 30 percent of the total milk of member producers during the month.

(2) A reserve processing plant operated by a federation of cooperative associations if, during the month, 30 percent or more of the producer milk of member producers of such cooperative is caused to be delivered to and physically received at pool plants qualified pursuant to paragraph (a) of this section either from the farms of such producers or by transfer in the form of fluid milk products (except filled milk) from the plant(s) of such cooperatives. If a pipeline is maintained between a reserve processing plant and a nonpool plant operated by another person and located on the same premises, the reserve processing plant shall be a pool plant for the month if the operator of such plant proves to the satisfaction of the market administrator that such plant should be eligible for pool status on the basis of the plant's monthly receipts and disposition of milk and that the pipeline was used only to move by-products (not milk) between such plants during the month.

(3) A reserve processing plant owned and operated by a cooperative association that also owns and operates a pool plant pursuant to § 1004.7(a) so long as the volume of the cooperative's member milk pooled at the reserve processing plant does not exceed the volume of sales of Class I milk (except filled milk) from the cooperative's pool distributing plant, plus the milk of member producers received directly at pool plants pursuant to § 1004.7(a) of other handlers during the month.

(4) A cooperative or federation of cooperatives operating a pool reserve processing plant qualified pursuant to this paragraph shall notify the market administrator each month, at the time of filing reports pursuant to § 1004.30 and in the detail prescribed by the market administrator, with respect to any receipts from member dairy farmers of the cooperative(s) delivering to such plant not meeting the health requirements for disposition as fluid milk in the marketing area

(e) A plant that qualified as a pool plant pursuant to paragraph (b) or (d) of this section during each of the immediately preceding months of September through February shall be qualified for automatic pool plant status for each of the following months of March through August, unless the plant operator files a written request with the market administrator prior to the beginning of any such month asking that such plant not be a pool plant. Such nonpool status shall be effective on the first day of the month following the receipt of such request and shall continue until the plant again qualifies as a pool plant pursuant to paragraph (b) or (d) of this section, subject to the following conditions:

(1) The automatic pool plant status for any plant identified in paragraph (e) of this section shall be cancelled if another plant is qualified as a pool plant on the basis of deliveries to the same plants through which such automatic pooling status was acquired by the plant. Cancellation of the plant's automatic pool plant status shall be effective on the first day of the month in which the other plant is qualified as a pool plant and shall continue until the plant again qualifies as a pool plant pursuant to paragraph (b) or (d) of this section; and

(2) The automatic pool plant status of a reserve processing plant operated by a federation of cooperative associations qualified pursuant to paragraph (d)(2) of this section shall be forfeited for any month during the March through August period in which the market administrator determines on the basis of the investigation conducted pursuant to paragraph (d)(2) of this section that such plant shall not be a pool plant for the month.

(f) A plant specified in paragraph (f) (1) or (2) of this section shall, except as provided in §§ 1004.32(e) and 1004.71(c), be exempt from the provisions of this part:

(1) Any plant qualified pursuant to paragraph (a) of this section which would be subject to the classification and pricing provisions of another order issued pursuant to the Act unless the Secretary determines that a greater volume of Class I milk, except filled milk, is disposed of from such plant as route disposition in the Middle Atlantic marketing area than is so disposed of in a marketing area regulated pursuant to such other order; or

(2) Any plant subject to the classification and pricing provisions of another order issued pursuant to the Act, notwithstanding its status under this order pursuant to paragraph (a) or (b) of this section.

[40 FR 18753, Apr. 30, 1975, as amended at 44 FR 21621, Apr. 11, 1979; 47 FR 5194, Feb. 4, 1982; 47 FR 51732, Nov. 17, 1982; 48 FR 39034, Aug. 29, 1983; 49 FR 33432, Aug. 23, 1984; 50 FR 16453, Apr. 26, 1985]

§ 1004.8 Nonpool plant.

"Nonpool plant" means a plant other than a pool plant. The following categories of nonpool plants are further defined:

(a) "Other order plant" means a plant that is fully subject to the pricing and payment provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a plant which is not a pool plant, a producer-handler plant, an other order plant, or the plant of a handler pursuant to § 1004.9(e), from which fluid milk products in consumer-type packages or dispenser units are disposed of as route disposition in the marketing area during the month.

(d) "Unregulated supply plant" means a plant which is not a pool plant, a producer-handler plant, an other order plant, or the plant of a handler pursuant to § 1004.9(e), from which fluid milk products are shipped during the month to a plant qualified under § 1004.7.

§ 1004.9 Handler.

"Handler" means any person described in paragraphs (a) through (f) of this section. Any person in his capacity as the operator of a pool plant or a cooperative association in its capacity as a handler pursuant to paragraph (b) or (c) of this section shall be a "pool handler".

(a) Any person in his capacity as the operator of:

(1) A pool plant;

(2) A partially regulated distributing plant;

(3) An unregulated supply plant; or

(4) An other order plant.

(b) Any cooperative association or federation of cooperative associations with respect to the milk of any producer which it causes to be diverted in accordance with the provisions of § 1004.12 for the account of such cooperative association or federation.

(c) Any cooperative association with respect to the milk of its producer members which is delivered from the farm to the pool plant of another person in a tank truck owned and operated by or under contract to such cooperative association, unless both the cooperative association and the operator of the pool plant notify the market administrator in writing prior to the first day of the month that the plant operator will be responsible for payment for the milk and is purchasing the milk on the basis of farm weights determined by farm bulk tank calibrations and butterfat tests based on samples taken at the farm. Milk for which the cooperative association is qualified pursuant to this paragraph shall be deemed to have been received at the location of the pool plant to which such milk is delivered.

(d) A producer-handler.

(e) A governmental agency in its capacity as the operator of a plant with route disposition in the marketing area.

(f) Any other person who by purchase or direction causes milk of producers to be picked up at the farm and/or moved to a plant.

[40 FR 18753, Apr. 30, 1975, as amended at 49 FR 33432, Aug. 23, 1984]

§ 1004.10 Producer-handler.

"Producer-handler" means any person who operates a dairy farm and a plant with route disposition in the marketing area, and who meets the conditions of paragraphs (a), (b), and (c) of this section:

(a) The sole source of supply of fluid milk products is his own farm production and transfers of such products from pool plants;

(b) The quantity of fluid milk products received from pool plants during the month does not exceed 10,000 pounds;

(c) Such person furnishes proof satisfactory to the market administrator that the maintenance and management of all dairy animals and other resources necessary to produce the entire amount of fluid milk products handled (excluding transfers from pool plants), and the operation of the plant are each the personal enterprise of and at the personal risk of such person; and

(d) Sections 1004.40 through 1004.45, 1004.50 through 1004.54, 1004.60 through 1004.62, 1004.70 through 1004.79, 1004.85 and 1004.86, 1004.90 through 1004.95 and and 1004.110 through 1004.122 shall not apply to a producer-handler.

§ 1004.11 Dairy farmer.

"Dairy farmer" means any person who produces milk which is delivered in bulk to a plant. A dairy farmer shall be a "dairy farmer for other markets" with respect to milk reported pursuant to § 1004.7(c)(5) or the proviso of paragraph (d)(4) of said § 1004.7.

[40 FR 18753, Apr. 30, 1975, as amended at 44 FR 21621, Apr. 11, 1979]

§ 1004.12 Producer.

Subject to the conditions of paragraph (e) and the exceptions of paragraph (f) of this section, "producer" means any person described in paragraphs (a) through (d) of this section.

(a) A dairy farmer with respect to milk which is received at a pool plant pursuant to § 1004.7(a), (b), (c) or (e) directly from the farm including milk received at a pool plant pursuant to § 1004.7(c) as milk diverted from a pool plant pursuant to § 1004.7(a), (b), or (e).

(b) A dairy farmer with respect to milk which is received at a pool plant pursuant to § 1004.7(d): *Provided*, That such milk is received directly from the farm of one who is a member of the cooperative operating the plant or is received directly from the farm of one who is a member of a cooperative association that is a member of the federation operating the plant, or is received as milk diverted from a pool plant pursuant to § 1004.7(a), (b) or (e).

(c) A dairy farmer with respect to milk received by a cooperative association in its capacity as a handler pursuant to § 1004.9(c).

(d) A dairy farmer with respect to milk which is diverted to a nonpool plant (other than a producer-handler plant) in accordance with the conditions of paragraphs (d)(1) and (d)(2) of this section.

(1) During any month of March through August.

(2) Not more than 18 days' production during any month of September through February unless all of the diversions of member and nonmember milk, as the case may be, are pursuant to paragraph (d)(2)(i) or (ii) of this section, respectively, and they fall within the limits prescribed thereunder. If a handler diverting milk pursuant to this paragraph (d)(2) diverts milk of any dairy farmer in excess of the limits prescribed such dairy farmer shall be a producer only with respect to that milk physically received at a pool plant.

(i) All of the diversions of milk of members of a cooperative association or a federation of cooperative associations to nonpool plants are for the account of such cooperative association or federation, and the amount of member milk so diverted does not exceed 50 percent of the volume of milk of all members of such cooperative association or federation delivered to or diverted from pool plants during the month.

(ii) All of the diversions of milk of dairy farmers who are not members of a cooperative association diverting milk for its own account during the month are diversions by a handler in his capacity as the operator of a pool plant from which the quantity of such nonmember milk so diverted does not exceed 40 percent of the total of such nonmember milk for which the pool plant operator is the handler during the month.

(e) Milk which is diverted in accordance with the provisions of this section shall be deemed to have been received by the handler for whose account it is diverted at a pool plant at the location of the plant from which it is diverted, except that, for the purpose of applying location adjustments pursuant to §§ 1004.52 and 1004.75 and the direct-delivery differential pursuant to § 1004.79, milk which is diverted in the manner described in paragraph (e) (1), (2), or (e)(3) of this section shall be treated as though received at the location of the plant to which diverted.

(1) Diverted from a pool plant at which no location adjustment credit is applicable to a plant at which a location adjustment credit is applicable.

(2) Diverted from a pool plant at which a location adjustment credit is applicable to a plant at which a greater location adjustment credit is applicable.

(3) Diverted from a pool plant in the direct-delivery zone to a plant outside such direct-delivery zone.

(f) This definition shall not include a:

(1) Producer-handler as defined in any order (including this past) issued pursuant to the Act;

(2) Dairy farmer for other markets;

(3) Government agency which is a handler pursuant to § 1004.9(e);

(4) Dairy farmer with respect to milk reported as milk diverted to an other order plant if any portion of such dairy farmer's milk so moved is assigned to Class I under the provisions of such other order; or

(5) Dairy farmer with respect to milk physically received at a pool plant as diverted milk from an other order plant if all of the milk so received from such dairy farmer is assigned to Class II and the milk is treated as producer milk under the provisions of such other order.

[40 FR 18753, Apr. 30, 1975, as amended at 44 FR 21621, Apr. 11, 1979; 47 FR 51732, Nov. 17, 1982; 49 FR 33432, Aug. 23, 1984]

§ 1004.13 Producer milk.

"Producer milk" means any skim milk or butterfat contained in milk:

(a) Received at a pool plant pursuant to § 1004.7(a), (b), (c) or (e) directly from the farm including milk received at a pool plant pursuant to § 1004.7(c) as milk diverted from a pool plant pursuant to § 1004.7(a), (b), or (e).

(b) Received at a pool plant pursuant to § 1004.7(d): *Provided*, That such milk is received directly from the farm of one who is a member of the cooperative operating the plant or is received directly from the farm of one who is a member of a cooperative association that is a member of the federation operating plant, or is received as milk diverted from a pool plant pursuant to § 1004.7(a), (b), or (e).

(c) Received from producers by a cooperative association in its capacity as a handler pursuant to § 1004.9(c); or

(d) Diverted to a nonpool plant in accordance with the provisions of § 1004.12.

[40 FR 18753, Apr. 30, 1975, as amended at 44 FR 21621, Apr. 11, 1979]

§ 1004.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts in the form of fluid milk products from any source other than producers, pool plants, or from a cooperative association in its capacity as a handler pursuant to § 1004.9(c);

(b) Receipts (including any Class II product produced in the handler's plant during a prior month) in a form other than as a fluid milk product which are reprocessed, converted, or combined with another product during the month; and

(c) Receipts in a form other than a fluid milk product for which the handler fails to establish a disposition.

§ 1004.15 Fluid milk product.

"Fluid milk product" means milk, skim milk (including concentrated and reconstituted milk or skim milk), buttermilk, cultured buttermilk, flavored milk, milk drinks (plain or flavored), filled milk, and (except ice cream, ice cream mixes, ice milk mixes, milkshake mixes, eggnog, yogurt, condensed or evaporated milk, and any product which contains 6 percent or more nonmilk fat [or oil]) any mixture in fluid form of cream and milk or skim milk containing less than 10 percent butterfat: *Provided*, That when the product is modified by the addition of nonfat milk solids, the amount of skim milk to be included within this definition shall be only that amount equal to the weight of skim milk in an equal volume of unmodified product of the same nature and butterfat content.

§ 1004.16 [Reserved]

§ 1004.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

§ 1004.18 Exempt milk.

"Exempt milk" means bulk fluid milk products received at a pool plant or a partially regulated distributing plant from the plant of a handler pursuant to § 1004.9(e) for processing and packaging and for which an equivalent quantity of packaged fluid milk products is returned to such handler during the month.

§ 1004.19 Federation

Federation means an organization that is formed by two or more cooperative associations as defined in § 1004.20 and which is incorporated under the laws of the state.

[44 FR 21621, Apr. 11, 1979]

§ 1004.20 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines, after application by the association:

(a) Is qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act";

(b) Has full authority in the sale of milk of its members and is engaged in making collective sales of or marketing milk or milk products for its members; and

(c) Has its entire activities under the control of its members.

HANDLER REPORTS

§ 1004.30 Reports of receipts and utilization.

(a) On or before the eighth day after the end of each month each handler with respect to each of his pool plants shall report for the month to the market administrator in the detail and on forms prescribed by the market administrator as follows:

(1) The quantities of skim milk and butterfat contained in:

(i) Receipts of producer milk (including such handler's own production);

(ii) Receipts of fluid milk products from other pool plants and milk received from a cooperative association for which it is a handler pursuant to § 1004.9(c); and

(iii) Receipts of other source milk;

(2) Inventories of fluid milk products on hand at the beginning and end of the month; and

(3) The utilization of all skim milk and butterfat required to be reported pursuant to this paragraph, showing separately in-area route disposition, except filled milk, and filled milk route disposition in the area;

(b) Each handler who operates a partially regulated distributing plant shall report as required in paragraph (a) of this section, except that receipts of milk from dairy farmers shall be reported in lieu of producer milk; such report shall include a separate statement showing the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area;

(c) Each producer-handler and each handler pursuant to § 1004.9(e) shall make reports to the market administrator at such time and in such manner as the market administrator may prescribe; and

(d) On or before the eighth day after the end of each month, each cooperative association and/or a federation of cooperative associations shall report with respect to milk for which it is a handler pursuant to § 1004.9 (b) or (c) as follows:

(1) Receipts of skim milk and butterfat from producers;

(2) Utilization of skim milk and butterfat diverted to nonpool plants; and

(3) The quantities of skim milk and butterfat delivered to each pool plant of another handler.

[40 FR 18753, Apr. 30, 1975, as amended at 49 FR 33432, Aug. 23, 1984]

§ 1004.31 [Reserved]

§ 1004.32 Other reports.

(a) Each pool handler shall report to the market administrator in detail and on forms prescribed by the market administrator as follows:

(1) On or before the 25th day after the end of the month for each pool plant, his producer payroll for such month which shall show for each producer:

(i) His name and address;

(ii) The total pounds of milk received from such producer;

(iii) The average butterfat content of such milk; and

(iv) The net amount of the handler's payment, together with the price paid and the amount and nature of any deduction;

(2) Such other information with respect to receipts and utilization of butterfat and skim milk as the market administrator shall prescribe.

(b) Promptly after a producer moves from one farm to another, or starts or resumes deliveries to a pool handler, the handler shall file with the market administrator a report stating the producer's name and post office address, the health department permit number, if applicable, the date on which the changes took place, and the farm and plant location involved.

(c) Each handler operating a partially regulated distributing plant who does not elect to make payments pursuant to § 1004.76(b) shall report the same information as required in paragraph (a) of this section with respect to dairy farmers from whom he receives milk.

(d) On or before the 20th day after the end of the month, each handler pursuant to § 1004.9(f) shall report to the market administrator, in the detail and on forms prescribed by the market administrator, all transactions wherein milk was bought or dealt in, giving the following information:

(1) The name and address of any cooperative association or producer for whom the handler by either purchase or direction caused milk of producers to be moved to a plant;

(2) The total pounds of milk involved in the transaction, and the average butterfat content of such milk; and

(3) Such other information with respect to such transaction as the market administrator may prescribe.

(e) Each handler operating a plant described in § 1004.7(f) shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at such plant, make reports to the market administrator at such time and in such manner as the market administrator may require (in lieu of other reports specified in this section or in § 1004.30) and allow verification of such reports by the market administrator.

CLASSIFICATION OF MILK

§ 1004.40 Classes of utilization.

Subject to the conditions set forth in §§ 1004.41 through 1004.44, all skim milk and butterfat required to be reported by a handler pursuant to §§ 1004.30 and 1004.32 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of as a fluid milk product except as provided in paragraph (b)(2), (3), or (7) of this section;

(2) Contained in inventory of packaged fluid milk products on hand at the end of the month; and

(3) Not specifically accounted for as Class II milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Used to produce any product other than a fluid milk product;

(2) Disposed of for livestock feed.

(3) Contained in fluid milk products which are dumped, if the handler gives the market administrator such advance notice of intent to dump as the market administrator may prescribe;

(4) Contained in inventory of fluid milk products in bulk which are on hand at the end of the month;

(5) In shrinkage of skim milk and butterfat, respectively, assigned pursuant to § 1004.41(b)(1), but not to exceed the following:

(i) Two percent of producer milk received at a pool plant; plus

(ii) One and one-half percent of milk received at a pool plant from a cooperative association in its capacity as a handler pursuant to § 1004.9(c); plus

(iii) One and one-half percent of milk received at a pool plant in bulk tank lots from other pool plants; plus

(iv) One and one-half percent of receipt of fluid milk products in bulk from an other order plant, exclusive of the quantity for which Class II utilization was requested by the handler (and by the operator of such other order plant if such receipt is fully subject to the classification and pricing provisions of such other order); plus

(v) One and one-half percent of receipts from dairy farmers for other markets pursuant to § 1004.11 and receipts of fluid milk products in bulk from unregulated supply plants, exclusive of the quantity for which Class II utilization was requested by the handler; less

(vi) One and one-half percent of milk moved in bulk tank lots from a pool plant to other plants; and plus

(vii) One-half of 1 percent in receipts of producer milk by a cooperative association in its capacity as a handler pursuant to § 1004.9(c);

(6) In shrinkage of skim milk and butterfat, respectively, assigned pursuant to § 1004.41(b)(2);

(7) Disposed of in bulk fluid milk products to manufacturing establishments such as bakeries, candy factories, soup factories, and similar establishments at which fluid milk products were used only in the manufacture of food products other than milk products; and

(8) In skim milk represented by the nonfat milk solids added to a fluid milk product for fortification which is in excess of the volume included within the fluid milk product definition pursuant to § 1004.15.

§ 1004.41 Shrinkage.

The market administrator shall allocate shrinkage over a handler's receipts at each pool plant as follows:

(a) Compute the total shrinkage of skim milk and butterfat, respectively, for each handler; and

(b) Shrinkage shall be prorated between: (1) Skim milk and butterfat in receipts described in § 1004.40(b)(5); and (2) skim milk and butterfat in other source milk, exclusive of that specified in § 1004.40(b)(5).

§ 1004.42 Classification of transfers and diversions.

Skim milk and butterfat in the form of any fluid milk product shall be classified:

(a) As Class I milk if diverted from a pool plant pursuant to § 1004.7(a), (b), or (e) to a pool plant pursuant to § 1004.7(c) or (d), or transferred from a pool plant or by a cooperative association as a handler pursuant to § 1004.9(c) to a pool plant, unless Class II utilization is indicated by the transferee and transferor handlers (or by the handler if such transaction is between two pool plants of the same handler) in their reports pursuant to § 1004.30(a) for the month, subject to the conditions of paragraphs (a)(1), (2), and (3) of this section:

(1) The skim milk or butterfat so assigned to either class shall be limited to the amount thereof remaining in such class in the transferee plant after computations pursuant to § 1004.44(a)(10) and the corresponding step of § 1004.44(b);

(2) If the transferor plant received during the month other source milk to be allocated pursuant to § 1004.44(a)(5), the skim milk and butterfat so transferred or diverted shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor handler received during the month other source milk to be allocated pursuant to § 1004.44(a)(9) or (10), and the corresponding steps of § 1004.44(b), the skim milk and butterfat so transferred or diverted up to the total of such receipts shall not be classified as Class I milk to a greater extent than would be applicable to a like quantity of such other source milk received at the transferee plant;

(b) As Class I milk, if transferred from a pool plant to a producer-handler;

(c) As Class I milk, if transferred or diverted from a pool plant or delivered by a cooperative association in the capacity as a handler pursuant to § 1004.9(c) to a handler pursuant to § 1004.9(e);

(d) As Class I milk, if transferred or diverted in bulk to a nonpool plant that is not an other order plant, a producer-handler plant, or the plant of a handler pursuant to § 1004.9(e), unless the requirements of paragraphs (d)(1) and (2) of this section are met, in which case the skim milk and butterfat so transferred or diverted shall be classified in accordance with the assignment resulting from paragraph (d)(3) of this section:

(1) The transferring or diverting handler claims classification pursuant to the assignment set forth in paragraph (d)(3) of this section in his report submitted to the market administrator pursuant to § 1004.30 for the month within which such transaction occurred;

(2) The operator of such nonpool transferee plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for the purpose of verification;

(3) The skim milk and butterfat so transferred shall be classified on the basis of the following assignment of utilization at such nonpool plant in excess of receipts of packaged fluid milk products from all pool plants and other order plants:

(i) Any route disposition in the marketing area shall be first assigned to the skim milk and butterfat in the fluid milk products so transferred or diverted from pool plants, and thereafter pro rata to receipts from other order plants;

(ii) Any route disposition in the marketing area of an other order issued pursuant to the Act shall be first assigned to receipts from plants fully regulated by such order, and thereafter pro rata to receipts from pool plants and other order plants not regulated by such order;

(iii) Class I utilization in excess of that assigned pursuant to paragraphs (d)(3) (i) and (ii) of this section shall be assigned first to the receipts from dairy farmers who the market administrator determines constitute the regular source of supply for such nonpool plant, and Class I utilization in excess of such receipts shall be assigned pro rata to unassigned receipts at such nonpool plant from all pool and other order plants; and

(iv) Any remaining receipts from pool plants or other order plants shall be assigned to Class II: *Provided*, That if on inspection of the books and records of the nonpool plant the market administrator finds that the remaining unassigned receipts at such plant exceed the available Class II utilization, the transfer shall be classified as Class I up to the amount of such excess.

(e) As follows, if transferred to another order plant in excess of receipts from such plant in the same category as described in paragraph (e)(1), (2), or (3) of this section:

(1) If transferred in packaged form, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated as a fluid milk product under the other order (including allocation under the conditions set forth in paragraph (e)(3) of this section);

(3) If the operators of both the transferor and transferee plants so request in the reports of receipts and utilization filed with their respective market administrators, transfers in bulk form shall be classified as Class II to the extent of the Class II utilization (or comparable utilization under such other order) available for such assignment pursuant to the allocation provisions of the transferee order;

(4) If information concerning the classification to which allocated under the other order is not available to the market administrator for purposes of establishing classification pursuant to this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and milk allocated to other classes shall be classified as Class II; and

(6) If the form in which any fluid milk product is transferred to an other order plant is not defined as a fluid milk product under such other order, classification shall be in accordance with the provisions of § 1004.40.

§ 1004.43 General rules.

(a) Each month, the market administrator shall correct for mathematical and other obvious errors, the reports of receipts and utilization submitted pursuant to § 1004.30(a) by each handler and compute the total pounds of skim milk and butterfat, respectively, in each class at each of the plants of such handler, and the total pounds of skim milk and butterfat in each class which was received from producers by a cooperative association handler pursuant to § 1004.9(b) and (c) and was not received at a pool plant.

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk used or disposed of in such product shall be considered to be an amount equivalent to the nonfat milk solids contained in such products plus all the water originally associated with such solids.

§ 1004.44 Classification of producer milk.

After making the computations pursuant to § 1004.43, the market administrator each month shall determine the classification of milk received from producers by each cooperative association handler pursuant to § 1004.9(b) and (c) which was not received at a pool plant, and the classification of milk received from producers and from cooperative association handlers pursuant to § 1004.9(c) at each pool plant for each handler as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class II the pounds of skim milk classified as Class II pursuant to § 1004.40(b)(5);

(2) Subtract from the total pounds of skim milk in Class I, the pounds of skim milk in receipts of exempt milk;

(3) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to paragraph (a)(5)(vi) of this section as follows:

(i) From Class II milk, the lesser of the pounds remaining, or 2 percent of such receipts; and

(ii) From Class I milk the remainder of such receipts;

(4) Except for the first month this order is effective, with respect to

plants which in the immediately preceding month were unregulated plants, subtract from the remaining pounds of skim milk in Class I, the pounds of skim milk in inventory of packaged fluid milk products on hand at the beginning of the month;

(5) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products from dairy farmers for other markets pursuant to § 1004.11 and from unidentified sources;

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order;

(iv) Receipts (other than exempt milk) of fluid milk products from a handler pursuant to § 1004.9(e);

(v) Reciepts of reconstituted skim milk in filled milk from unregulated supply plants;

(vi) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual-handler pooling to the extent that reconstituted skim milk is allocated to Class I at the transferor plant and is not assigned under this step at a plant regulated under another market pool order;

(6) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II:

(i) The pounds of skim milk in receipts of fluid milk products from unregulated supply plants for which the handler requests Class II utilization, but not in any case to exceed the pounds of skim milk remaining in Class II;

(ii) The pounds of skim milk remaining in receipts of fluid milk products from unregulated supply plants which are in excess of the pounds of skim milk determined as follows:

(*a*) Multiply the pounds of skim milk remaining in Class I milk (exclusive of transfers between pool plants of the same handler) at all pool plants of the handler by 1.25;

(*b*) Subtract from the result the sum of the pounds of skim milk at all such plants in producer milk, receipts from pool plants of other handlers, from a cooperative association in its capacity as a handler pursuant to § 1004.9(c), and in receipts in bulk from other order plants; and

(*c*)(*1*) Multiply any resulting plus quantity by the percentage that receipts of skim milk in fluid milk products from unregulated supply plants remaining at this plant is of all such receipts remaining at all pool plants of such handler, after any deductions pursuant to paragraph (a)(6)(i) of this section.

(*2*) Should such computation result in a quantity to be subtracted from Class II which is in excess of the pounds of skim milk remaining in Class II, the pounds of skim milk in Class II shall be increased to the quantity to be subtracted and the pounds of skim milk in Class I shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(*s*) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made.

(iii) The pounds of skim milk in remaining receipts of fluid milk products in bulk from an other order plant which are in excess of similar movements to such plant, if such receipts were classified and priced pursuant to the other order and if Class II utilization was requested by the operator of such plant and the transferee handler, but not in excess of the pounds of skim milk remaining in Class II milk;

(7) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in inventory of fluid milk products in bulk (and for the first month this order is effective, in packaged fluid milk products not subtracted pursuant to paragraph (a)(4) of this section) on hand at the beginning of the month;

(8) Add to the remaining pounds of skim milk in Class II, the pounds subtracted pursuant to paragraph (a)(1) of this section;

(9)(i) Subtract from the pounds of skim milk remaining in each class pro rata to the total pounds of skim milk remaining in each class in all pool plants of the receiving handler, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants and from other order plant(s) if not classified or priced pursuant to the order regulating such plant, that were not subtracted pursuant to paragraph (a)(6)(i) or (ii) of this section;

(ii) Should such proration result in the amount to be subtracted from any class exceeding the pounds of skim milk remaining in such class in the pool plant at which such skim milk was received, the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made;

(10) Subtract from the pounds of skim milk remaining in each class, the pounds of skim milk in remaining receipts of fluid milk products in bulk from other order plants (except receipts from other order plants not classified and priced pursuant to the order regulating such plant), in excess in each case of similar movements to the same plant, pursuant to the following procedure:

(i) Subject to the provisions of paragraphs (a)(10)(ii) and (iii) of this section such subtraction shall be pro rata to whichever of the following represents the higher proportion of Class II milk:

(*a*) The estimated utilization of skim milk in each class, by all handlers, as announced for the month pursuant to § 1004.45(b); or

(*b*) The pounds of skim milk in each class remaining at all pool plants of the handler;

(ii) Should proration pursuant to paragraph (a)(10)(i) of this section result in the total pounds of skim milk to be subtracted from Class II at all pool plants of the handler exceeding the pounds of skim milk remaining in Class II at such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which received;

(iii) Except as provided in paragraph (a)(10)(ii) of this section, should proration pursuant to either paragraph (a)(10)(i) or (ii) of this section result in the amount to be subtracted from either class exceeding the pounds of skim milk remaining in such class in the pool plant at which such skim milk was received, the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case, the utilization of milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made.

(11) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk received in fluid milk products from other pool plants and from a cooperative association in its capacity as a handler pursuant to § 1004.9(c) according to the classification assigned pursuant to § 1004.42(a); and

(12) If the pounds of skim milk remaining in both classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class II. Any amount so subtracted shall be known as "overage."

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) Combine the amounts of skim milk and butterfat determined pursuant to paragraphs (a) and (b) of this section into one total for each class and determine the weighted average butterfat content of producer milk in each class.

§ 1004.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification

(a) On or before the 15th day after the end of each month, report to each cooperative association which so requests, the class utilization of milk purchased from such association or delivered to the pool plant(s) of each handler by producers who are members of such cooperative association. For the purpose of this report, the milk so purchased or received shall be allocated to each class in the same ratio as all producer milk received by such handler during such month;

(b) Whenever required for purpose of allocating receipts from other order plants pursuant to § 1004.44(a)(10) and the corresponding step of § 1004.44(b), the market administrator shall estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose;

(c) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products from an other order plant, the classification to which such receipts are allocated pursuant to § 1004.44 pursuant to such report, and thereafter any change in such allocation required to correct errors disclosed in verification of such report; and

(d) Furnish to each handler operating a pool plant who has shipped fluid milk products to an other order plant, the classification to which the skim milk and butterfat in such fluid milk products were allocated by the market administrator of the order on the basis of the report of the receiving handler, and, as necessary, any changes in such classification arising in the verification of such report.

CLASS PRICES

§ 1004.50 Class prices.

Subject to the provisions of § 1004.52 the minimum class prices per hundredweight of milk containing 3.5 percent butterfat for the month shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.78.

(b) *Class II price.* Subject to the adjustment set forth below for the applicable month, the Class II price shall be the basic formula price for the month.

Month	Amount
January	+$0.05
February	+.04
March	-.03
April	-.07
May	-.10
June	-.09
July	-.05
August	+.12
September	+.08
October	+.08
November	+.08
December	+.08

§ 1004.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1004.52 Location differentials to handlers.

(a) For that milk received from producers and from a cooperative association in its capacity as a handler pursuant to § 1004.9(c) at a pool plant located 55 miles or more by shortest highway distance from the city hall in Philadelphia, Pa., and also 75 miles or more by the shortest highway distance from the nearer of the zero milestone in Washington, D.C., or the city hall in Baltimore, Md. (all such distance to be determined by the market administrator), and which is assigned to Class I milk, subject to the limitations pursuant to paragraph (b) of this section, and for other source milk for which a location adjustment is applicable, the Class I price shall be reduced at the rate of 1.5 cents per 10-mile distance or fraction thereof that such plant location is from the nearest of such basing points.

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned to Class I disposition at the transferee plant in an amount not in excess of that by which such Class I disposition exceeds 95 percent of the sum of receipts at such plant from producers, cooperative associations pursuant to § 1004.9(c), and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants, and from dairy farmers for other markets pursuant to § 1004.11. Such assignment is to be made first to transferor plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply: *Provided*, That for the purposes of this paragraph, transfers from a pool plant to a second pool plant which are in turn transferred to a third pool plant shall be treated as though the transfer was direct from the originating plant to the plant of final receipt.

EFFECTIVE DATE NOTE: Paragraph (a) of § 1004.52 was revised at 50 FR 45596, Nov. 1, 1985, effective December 1, 1985. At 50 FR 49674, Dec. 4, 1985, the effective date was suspended until further notice. For the convenience of the user, the revised text appears below.

1004.52 Location differentials to handlers.

(a) For that milk received from producers and from a handler described in § 1004.9(c) at a pool plant and which is assigned to Class I milk, subject to the limitations pursuant to paragraph (b) of this section, and for other source milk for which a location adjustment is applicable, the Class I price shall be reduced by the amount stated in paragraph (a) (1) and (2) of this section for the location of such plant.

(1) For a plant located in any of the following Pennsylvania counties, the adjustment shall be minus 10 cents.

Berks
Dauphin
Lebanon

(2) For a plant located outside the area described in paragraph (a)(1) of this section, and which is 55 miles or more from the city hall in Philadelphia, Pennsylvania, and also 75 miles or more from the nearer of the zero milestone in Washington, DC, or the city hall in Baltimore, Maryland (all such distances to be based on the shortest highway distance as determined by the market administrator), the adjustment shall be minus 2.2 cents per 10 miles distance or fraction thereof that such plant location is from the nearest of such basing points.

* * * * *

§ 1004.53 Announcement of class prices and producer butterfat differential.

On or before the fifth day of each month the market administrator shall publicly announce by posting in a conspicuous place in his office and by such other means as he deems appropriate the following:

(a) The Class I price for the following month, and for the first month for which this paragraph is effective, the Class I price for the current month;

(b) The Class II price for the preceding month; and

(c) The producer butterfat differential for the preceding month.

1004.54 Equivalent prices or indexes.

If for any reason a price or index specified by this part for use in computing class prices or other purposes is not reported or published in the manner described in this part, the market administrator shall use a price or index determined by the Secretary to be equivalent or comparable with the factor which is specified.

UNIFORM PRICES

§ 1004.60 Pool obligation of each pool handler.

The net pool obligation of each pool handler for each pool plant, and of each cooperative association handler pursuant to § 1004.9(b) and (c) with respect to milk which was not received at a pool plant, shall be a sum of money computed by the market administrator as follows:

(a) Multiply the quantity of milk received from a cooperative association as a handler pursuant to § 1004.9(c) and allocated pursuant to § 1004.44(a)(11) and the corresponding step of § 1004.44(b) and the quantity of producer milk in each class, as computed pursuant to § 1004.44(c), by the applicable class prices (adjusted pursuant to § 1004.52);

(b) Add the amount obtained from multiplying the pounds of overage deducted from each class pursuant to § 1004.44 (a)(12) and the corresponding step of § 1004.44(b) by the applicable class prices adjusted by the applicable differentials pursuant to §§ 1004.52, 1004.74, and 1004.79;

(c) Add the amounts computed under paragraphs (c)(1) and (2) of this section:

(1) Multiply the difference between the applicable Class II price for the preceding month and the applicable Class I price for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1004.44(a)(7) and the corresponding step of § 1004.44(b) for the current month.

(2) Multiply the difference between the applicable Class I price for the preceding month and the applicable Class I price for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1004.44(a)(4) and the corresponding step of § 1004.44(b). If the Class I price for the current month is less than the Class I price for the preceding month, the result shall be a minus amount.

(d) Add an amount equal to the difference between the value at the Class I price applicable at the pool plant and the value at the Class II price, with respect to skim milk and butterfat in other source milk subtracted from Class I pursuant to § 1004.44(a)(5) and the corresponding step of § 1004.44(b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1004.44(a)(5)(v) and (vi) and the corresponding step of § 1004.44(b) the Class I price shall be adjusted to the location of the transferor plant but not less than the Class II price; and

(e) Add an amount equal to the value at the Class I price of skim milk and butterfat assigned to Class I pursuant to § 1004.44(a)(9) and the corresponding step of § 1004.44(b) (excluding receipts from partially-regulated distributing plants for which disposition a specific allocation is made to Federal order receipts from this or any other order) adjusted for the location of the nearest plant from which such types of receipts were received.

(f) With respect to milk marketed on and after the effective date hereof through June 1983, subtract the amount obtained by multiplying the pounds of bulk fluid milk products that were transferred or diverted from a pool plant to a nonpool plant and classified as Class II milk pursuant to § 1004.42(d) or § 1004.42(e)(3) by a rate for each truckload of milk so moved that is equal to 3.6 cents per hundredweight for each 10 miles or fraction thereof that the nonpool plant is located more than 200 miles (as determined by the market administrator) from the nearest of the following locations: the city hall in Philadelphia, Pennsylvania; the zero milestone in Washington, D.C.; the city hall in Baltimore, Maryland; the transferor plant; or, for diversions, the pool plant of last receipt for the major portion of the milk on the load or the courthouse of the county where the major portion of the milk so diverted was produced. No credit shall apply to the total quantity of milk so moved to a given nonpool plant by a handler during the month if any portion of the milk is assigned to Class I.

[40 FR 18753, Apr. 30, 1975, as amended at 48 FR 16234, Apr. 15, 1983]

§ 1004.61 Computation of weighted average price and uniform prices for base milk and excess milk.

(a) For each month the market administrator shall compute the "weighted average price" per hundredweight of milk of 3.5 percent butterfat content as follows:

(1) Combine into one total the values computed pursuant to § 1004.60 for all handlers who filed the reports prescribed by § 1004.30 for the month and who made the payments pursuant to § 1004.71 for the preceding month;

(2) Add an amount equal to the total value of the location differentials computed pursuant to § 1004.75;

(3) Add an amount equal to not less than one-half of the unobligated balance in the producer settlement fund;

(4) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk included pursuant to paragraph (a)(1) of this section; and

(ii) The total hundredweight for which a value is computed pursuant to § 1004.60(e); and

(5) Subtract not less than 4 cents nor more than 5 cents per hundredweight.

(b) Subject to paragraph (c) of this section, for each month the market administrator shall compute the uniform prices per hundredweight for base milk and excess milk, each of 3.5 percent butterfat content, f.o.b. market, as follows:

(1) Compute the aggregate value of excess milk for all handlers included in the computations pursuant to paragraph (a) of this section as follows:

(i) Multiply the quantity of such milk which does not exceed the total quantity of producer milk received by such handlers assigned to Class II milk by the Class II milk price;

(ii) Multiply the remaining hundredweight quantity of excess milk by the Class I price; and

(iii) Add together the resulting amounts;

(2) Divide the total value of excess milk obtained in paragraph (b)(1) of this section by the total hundredweight of such milk and round to the nearest cent;

(3) Subtract the withholding rate for the advertising and promotion program as computed in § 1004.121(e). The result shall be the uniform price for excess milk;

(4) From the amount resulting from the computations of paragraphs (a)(1) through (3) of this section subtract an amount computed by multiplying the hundredweight of milk specified in paragraph (a)(4)(ii) of this section by the weighted average price;

(5) Subtract the aggregate value of excess milk determined in paragraph (b)(1) of this section;

(6) Divide the result obtained in paragraph (b)(5) of this section by the total hundredweight of base milk for handlers included in the computations pursuant to paragraph (a) of this section and subtract not less than 4 cents nor more than 5 cents per hundredweight; and

(7) Subtract the withholding rate for the advertising and promotion program as computed in § 1004.121(e). The result shall be the uniform price for base milk.

(c) If the base milk price obtained in paragraph (b)(7) of this section should exceed the Class I price, the aggregate amount in excess thereof shall be included in the computation of the excess milk price pursuant to paragraph (b)(1) of this section, except that if by such addition the excess milk price should exceed the base milk price then the aggregate amount of the excess shall be prorated to the aggregate values of base milk and excess milk on the basis of the respective volumes of base and excess milk.

[45 FR 23402, Apr. 7, 1980]

§ 1004.62 Announcement of weighted average price and uniform prices for base milk and excess milk.

On or before the 13th day of each month, the market administrator shall publicly announce by posting in a conspicuous place in his office and by such other means as he deems appropriate, the weighted average price and uniform prices for base milk and excess milk computed pursuant to § 1004.61 for the preceding month.

PAYMENTS FOR MILK

§ 1004.70 Producer-settlement fund.

The market administrator shall maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments into such fund pursuant to §§ 1004.71, 1004.76 and 1004.77 and out of which he shall make all payments from such fund pursuant to §§ 1004.72 and 1004.77: *Provided*, That the market administrator shall offset the payment due to a handler against payment due from such handler.

§ 1004.71 Payments to the producer-settlement fund.

On or before the 15th day after the end of the month each handler shall pay to the market administrator the amount, if any, by which the total amount specified in paragraph (a) of this section exceeds the amounts specified in paragraph (b) of this section:

(a) The net pool obligation computed pursuant to § 1004.60 for such handler;

(b) The sum of:

(1) The value of milk received by such handler from producers and from cooperative association handlers pursuant to § 1004.9(c) at the applicable uniform price(s) pursuant to § 1004.61 adjusted by location differentials, less in the case of a cooperative association on milk for which it is a handler pursuant to § 1004.9(c), the amount due from other handlers pursuant to § 1004.73(d), exclusive of differential butterfat values; and

(2) The value at the weighted average price, adjusted by the applicable location differential on nonpool milk pursuant to § 1004.75(b), with respect to other source milk for which a value was computed pursuant to § 1004.60(e).

(c) Each handler operating a plant specified in § 1004.7(f)(1) if such plant is subject to the classification and pricing provisions of another order which provides for individual-handler pooling, shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of on routes in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant on routes in the marketing areas regulated by two or more market-wide pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area; and

(2) Compute the value of the quantity assigned in paragraph (b)(1) of this section to Class I disposition in this area, at the Class I price under this part applicable at the location of the other order plant and subtract its value at the Class II price.

[40 FR 18753, Apr. 30, 1975, as amended at 45 FR 23402, Apr. 7, 1980]

§ 1004.72 Payments from the producer-settlement fund.

On or before the 16th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1004.71(b) exceeds the amount computed pursuant to § 1004.71(a), subject to the following conditions:

(a) If the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available.

(b) If the 16th day after the end of the month is a Saturday, Sunday, or national holiday, the market administrator may delay payments pursuant to this section until the next day his office is open for public business.

[45 FR 23402, Apr. 7, 1980]

§ 1004.73 Payments to producers and to cooperative associations.

(a) Except as provided in paragraphs (b) and (d) of this section, each pool handler shall make payment as specified in paragraphs (a)(1) and (2) of this section to each producer from whom milk is received.

(1) On or before the last day of each month at not less than the Class II price for the preceding month per

hundredweight for his deliveries of producer milk during the first 15 days of the month; and

(2) On or before the 20th of the following month at not less than the uniform price for base milk computed pursuant to § 1004.61(b) with respect to base milk received from such producer and not less than the uniform price for excess milk computed pursuant to § 1004.61(b) for excess milk received from such producer, subject to the following adjustments:

(i) Proper deductions authorized in writing by such producer;

(ii) Partial payment made pursuant to paragraph (a)(1) of this section;

(iii) The butterfat differential computed pursuant to § 1004.74;

(iv) Less the location differential applicable pursuant to § 1004.75; and

(v) If by such date such handler has not received full payment from the market administrator pursuant to § 1004.72 for such month he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after receipt of the balance due from the market administrator.

(b) In the case of a cooperative association which the market administrator determines is authorized by its producer-members to collect payment for their milk and which has so requested any handler in writing, such handler shall on or before the second day prior to the date on which payments are due individual producers, pay the cooperative association for milk received during the month from the producer-members of such association as determined by the market administrator an amount equal to not less than the total due such producer-members as determined pursuant to paragraph (a) of this section;

(c) In the case of milk received by a handler from a cooperative association in its capacity as the operator of a pool plant such handler shall on or before the second day prior to the date on which payments are due individual producers, pay to such cooperative association for milk so received during the month, an amount not less than the value of such milk computed at the applicable class prices for the location of the plant of the buying handler; and

(d) Each handler who receives milk from a cooperative association handler pursuant to § 1004.9(c), shall on or before the second day prior to the date payments are due individual producers, pay such cooperative association for such milk as follows:

(1) A partial payment for milk received during the first 15 days of the month at the rate specified in paragraph (a)(1) of this section; and

(2) A final payment equal to the value of such milk at the uniform price(s) adjusted by the applicable differentials pursuant to §§ 1004.74 and 1004.75, less the amount of partial payment on such milk.

(e) In making payments to producers pursuant to paragraph (a)(2) of this section, or to a cooperative association pursuant to paragraph (b) of this section, each pool handler shall furnish such producer or cooperative association with respect to each of its producer members from whom the handler received milk during the month, a written statement showing:

(1) The month and the identity of the handler and the producer;

(2) The total pounds and average butterfat test of milk delivered by the producer;

(3) The minimum rate at which payment to such producer is required under paragraph (a)(2) of this section;

(4) The rate which is used in making the payment, if such rate is other than the applicable minimum rate;

(5) The nature and amount of any deductions made in payment due such producer; and

(6) The net amount of the payment to the producer.

[40 FR 18753, Apr. 30, 1975, as amended at 45 FR 23403, Apr. 7, 1980]

§ 1004.74 Butterfat differential.

In making the payments to producers and cooperative associations required pursuant to § 1004.73, each handler shall add for each one-tenth of 1 percent of average butterfat content above 3.5 percent, or may deduct for each one-tenth of 1 percent of average butterfat content below 3.5 percent, as a butterfat differential an amount per hundredweight which shall be computed by the market administrator as follows: Multiply by 0.115 and round to the nearest one-tenth cent the simple average of the daily wholesale selling prices (using the mid-point of any price range as one price) per pound of Grade A (92-score) bulk creamery butter at Chicago, as reported by the Department for the month.

§ 1004.75 Location differentials to producers and on nonpool milk.

(a) Subject to the exception pursuant to § 1004.12(d), for that milk received from producers and from cooperative association handlers pursuant to § 1004.9(c) at a pool plant located 55 miles or more from the city hall in Philadelphia, Pa., and also at least 75 miles from the nearer of the zero milestone in Washington, D.C., or the city hall in Baltimore, Md. (all distances to be the shortest highway distance as determined by the market administrator), the uniform price for base milk computed pursuant to § 1004.61(b) shall be reduced 1.5 cents for each 10 miles distance or fraction thereof that such plant is from the nearest of such basing points.

(b) For purposes of computations pursuant to §§ 1004.71 and 1004.72 the weighted average price shall be reduced at the rate set forth in paragraph (a) of this section applicable at the location of the nonpool plant from which the milk was received, except that the adjusted weighted average price shall not be less than the Class II price.

[40 FR 18753, Apr. 30, 1975, as amended at 45 FR 23403, Apr. 7, 1980]

Effective Date Note: Section 1004.75 was revised at 50 FR 45596, Nov. 1, 1985, effective December 1, 1985. At 50 FR 49674, Dec. 4, 1985, the effective date was suspended until further notice. For the convenience of the user, the revised text appears below.

§ 1004.75 Location differentials to producers and on nonpool milk.

(a) In making the payments required pursuant to § 1004.73, the uniform price for base milk computed pursuant to § 1004.61(b) shall be reduced by the amounts set forth in § 1004.52 according to the location of the plant where the milk being priced was received.

(b) For purposes of computations pursuant to §§ 1004.71 and 1004.72 the weighted average price shall be reduced by the amounts set forth in § 1004.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted weighted average price shall not be less than the Class II price.

§ 1004.76 Payments by a handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month either of the amounts (at the handler's election) calculated pursuant to paragraph (a) or (b) of this section. If the handler fails to report pursuant to §§ 1004.30(b) and 1004.32(c) the information necessary to compute the amount specified in paragraph (a) of this section, he shall pay the amount computed pursuant to paragraph (b) of this section:

(a) An amount computed as follows:

(1)(i) The obligation that would have been computed pursuant to § 1004.60 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant, a cooperative association as a handler pursuant to § 1004.9(b) or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II milk if allocated to such class at the pool plant or other order plant and be valued at the weighted average price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class II price. There shall be included in the obligation so computed a charge in the amount specified in § 1004.60(e) and a credit in the amount specified in

§ 1004.71(b)(2) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class II price, unless an obligation with respect to such plant is computed as specified below in this subparagraph; and

(ii) If the operator of the partially regulated distributing plant so requests, and provides with his reports pursuant to §§ 1004.30(b) and 1004.32(c) similar reports with respect to the operations of any other nonpool plant which serves as a supply plant for such partially regulated distributing plant by shipments to such plant during the month equivalent to the requirements of § 1004.7(b) with agreement of the operator of such plant that the market administrator may examine the books and records of such plant for purposes of verification of such reports, there will be added the amount of the obligation computed at such nonpool supply plant in the same manner and subject to the same conditions as for the partially regulated distributing plant.

(2) From this obligation there will be deducted the sum of: (i) The gross payments made by such handler for milk (approved by a duly constituted health authority for fluid disposition) received during the month from dairy farmers at such plant and like payments made by the operator of a supply plant(s) included in the computations pursuant to paragraph (a)(1) of this section, and (ii) any payments to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant.

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk on routes in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants, cooperative associations in their capacity as handlers pursuant to § 1004.9(b), and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I price, subtract its value at the weighted average price, and add for the quantity of reconstituted skim milk specified in paragraph (b)(3) of this section its value computed at the Class I price less the value of such milk at the Class II price (except that the Class I price and the weighted average price shall be adjusted for the location of the nonpool plant and shall not be less than the Class II price).

[40 FR 18753, Apr. 30, 1975, as amended at 45 FR 23403, Apr. 7, 1980]

§ 1004.77 Adjustment of accounts.

Whenever verification by the market administrator of reports or payments of any handler discloses errors resulting in money due: (a) The market administrator from such handler, (b) such handler from the market administrator, or (c) any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred.

§ 1004.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1004.71, 1004.73, 1004.76, 1004.77, 1004.79, 1004.85, or 1004.86 shall be increased 1 percent beginning on the day after the due date, and on the same day of each succeeding month until such obligation is paid, subject to the following conditions:

(a) The amount payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid charges previously computed pursuant to this section and all such amounts shall be paid to the administrative assessment fund maintained by the market administrator;

(b) Any obligation that was determined at a date later than that prescribed by the order because of a handler's failure to submit a report to the market administrator when due, shall be considered to have been payable by the date it would have been due if the report had been filed when due; and

(c) Payments shall be deemed not to have been made until such payments have been received, except:

(1) Any payment received after the due date in an envelope that is postmarked not later than the second day prior to the due date shall be considered to have been received by the due date; and

(2) If the date by which payments must be received falls on a Saturday or Sunday or on a national holiday, payments shall be considered to have been received by the due date if received not later than the next day on which the market administrator's office is open for public business.

[45 FR 23403, Apr. 7, 1980]

§ 1004.79 Direct-delivery differential.

For producer milk received at a plant located within 55 miles of the city hall in Philadelphia, Pa., the handler in making payments to producers and cooperative association handlers pursuant to § 1004.9(c), in addition to any amounts required by other provisions of this part, shall pay 6 cents per hundredweight of milk so received.

Administrative Assessment and Marketing Service Deduction

§ 1004.85 Assessment for order administration.

As his pro rata share of the expense of administration, each handler shall pay to the market administrator on or before the 20th day after the end of the month, 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe with respect to milk handled during the month as follows:

(a) Each handler (excluding a cooperative association in its capacity as a handler pursuant to § 1004.9(c), and a cooperative association as the operator of a pool plant with respect to milk transferred in bulk to a pool plant) with respect to his receipts of producer milk (including such handler's own farm production, milk received from a cooperative association pursuant to § 1004.9(c), and milk transferred in bulk from a pool plant owned and operated by a cooperative association) and other source milk allocated to Class I pursuant to § 1004.44(a)(5) and (9) and the corresponding step of § 1004.44(b);

(b) Each handler in his capacity as the operator of a partially regulated distributing plant with respect to his route disposition in the marketing area in excess of his receipts of Class I milk from pool plants, cooperative associations as handlers pursuant to § 1004.9(b), and other order plants assigned to such disposition.

§ 1004.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, making payments directly to producers for milk (other than milk of his own production) pursuant to § 1004.73(a) shall deduct 5 cents per hundredweight or such lesser amount as the Secretary may prescribe and shall pay such deductions to the market administrator on or before the 20th day after the end of the month. Such money shall be expended by the market administrator to provide market information and to verify the weights, samples and tests of milk of producers who are not receiving such service from a cooperative association; and

(b) In the case of producers for whom the Secretary determines a cooperative association is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made directly to such producers pursuant to § 1004.73(a) as are authorized by such producers on or before the 18th day after the end of each month and pay such deductions to the cooperative rendering such services.

BASE-EXCESS PLAN

§ 1004.90 Base milk.

"Base milk" means milk received from a producer by a pool handler which is not in excess of such producer's daily base computed pursuant to § 1004.92 multiplied by the number of days in such month on which such producer's milk was so received: *Provided*, That with respect to any producer on every-other-day delivery, the day of nondelivery prior to a day of delivery, although such prior day is in the preceding month, shall be considered as a day of delivery for purposes of this paragraph.

§ 1004.91 Excess milk.

"Excess milk" means milk received from a producer by a pool handler which is in excess of base milk received from such producer during the month.

§ 1004.92 Computation of base for each producer.

For each month of the year, the market administrator shall compute, subject to the rules set forth in § 1004.93, a base for each producer described in paragraphs (a) through (e) of this section by dividing the applicable quantity of milk receipts specified in such paragraph by 153 (by 154 in the case of a producer on every-other-day delivery schedule who delivered August 1) less the number of days, if any, during the applicable base-forming period of August through December for which it is shown that the day's production of milk of such producer was not received by a pool handler as described in the applicable paragraphs (a) through (e) of this section under which such producer's base is computed: *Provided*, That in no event shall the number of days used to compute a producer's base pursuant to this section be less than 120.

(a) For any producer, except as provided in paragraphs (b) through (f) of this section, the quantity of milk receipts shall be the total pounds of producer milk received by all pool handlers from such producer during the immediately preceding months of August through December. However during the August-December, 1984 base-forming period only, the quantity of milk receipts shall include the total pounds of milk received from such producer: (1) As producer milk by pool handlers; and (2) as dairy farmer milk pooled on some other Federal order(s), which was reported and eligible to be diverted as producer milk pursuant to § 1004.12(d) but is subject to the classification and pricing provisions of such other order(s) issued pursuant to the Act and § 1004.12(f)(4).

(b) Except as provided in paragraph (c) of this section, for any producer whose milk was received at a plant which first became a pool plant after the beginning of the preceding August-December period, which plant was a pool plant for at least 120 days during such period, the quantity of milk receipts to be used in the computation of such producer's base shall be the total pounds of milk received from such dairy farmer at such plant during the entire August-December period.

(c) For any producer who on August 1 was an Order 2 (New York-New Jersey) producer and who held such status in all or part of the 2 months of August and September and who otherwise was a producer only under this part for all of the remaining August through December period, the quantity of milk receipts shall be the total pounds of milk received from such dairy farmer by pool handlers under both orders throughout the August-December period.

(d) For any producer whose milk was received during the preceding August through December period at a plant which became a pool plant pursuant to § 1004.7(a) during or after such August through December period, the quantity of milk receipts shall be the total pounds of milk received from such dairy farmer during such August-December period by pool handlers as producer milk and at such plant as a nonpool plant.

(e) For any producer whose milk, in the initial month of operation of this extended order, is received at a plant which becomes a pool plant pursuant to § 1004.7(b) for such month on the basis of qualifying shipments to a plant(s) which was not a pool plant in the immediately preceding month but is a pool plant(s) pursuant to

§ 1004.7(a) in such initial month, the quantity of milk receipts shall be the total pounds of milk received from such dairy farmer during the immediately preceding August-December period (1) as producer milk by pool handlers and (2) as direct receipts at such transferor (nonpool) plant.

(f) Any producer who made no qualifying milk deliveries during the base-forming period of August through December, or who relinquishes his established base pursuant to § 1004.94, shall have a base reflecting the percentage of his average daily deliveries of producer milk each month as set forth in the following table. A new base is earned on the basis of his milk deliveries during the subsequent August through December period.

Month	Percentage of production on base
January and February	40
March through June	50
July	60
August through November	70
December	80

(40 FR 18753, Apr. 30, 1975, as amended at 49 FR 44987, Nov. 14, 1984)

§ 1004.93 Base rules.

The following rules shall apply in connection with the establishment of bases.

(a) A base computed pursuant to paragraphs (a) through (e) of § 1004.92 (except as provided in paragraph (f) of said section) shall be effective for the subsequent months of March through February, inclusive.

(b) A base computed pur[illegible] to paragraphs (a) through [illegible] of § 1004.92 may be transferred only in its entirety to another dairy farmer and only upon discontinuance of milk production because of the entry into military service of the baseholder.

(c) Base transfers shall be accomplished only through written application to the market administrator on forms prescribed by the market administrator and shall be signed by the baseholder and by the person to whom such base is to be transferred: *Provided*, That if a base is held jointly, except as provided in paragraph (e) of this section, the entire base only is transferable and only upon receipt of such application signed by all joint holders.

(d) If a producer operates more than one farm and milk is received from each at a pool plant or by a cooperative association in its capacity as a handler pursuant to § 1004.9(b) or (c), he shall establish a separate base with respect to producer milk delivered from each such farm: *Provided*, That if such farms and herds are combined into one dairy farm, the separate bases may be combined into one base subject to approval of the market administrator.

(e) Only one base shall be allocated with respect to milk produced by one or more persons where a dairy farm is jointly owned or operated: *Provided*, That in the case of a base established jointly, if a copy of the partnership agreement setting forth as a percentage of the total interest of the partners in the base is filed with the market administrator before the end of the base forming period, then upon termination of the partnership agreement each partner will be entitled to his stated share of the base to hold in his own right or to transfer in conformity with the provisions of paragraph (b) or (c) of this section (including transfer to a partnership of which he is a member). Such termination of partnership shall become effective as of the end of any month during which an application for such division of base signed by each member of such partnership is received by the market administrator.

(f) Two or more producers with bases may combine such bases upon the formation of a bona fide partnership operating from one farm. Such a combination shall be considered a joint base under paragraph (e) of this section.

(g) Subject to approval by the market administrator, the name of the baseholder may be changed to that of another member of the baseholder's immediate family but only under circumstances where the base would be applicable to milk production from the same herd and on the same farm.

§ 1004.94 Relinquishing a base.

A producer holding an established base can, upon notification to the market administrator, relinquish his established base and be paid pursuant to the provisions of § 1004.92(f) beginning with the first day of the month in which such notification is received by the market administrator and extending until March 1, next.

§ 1004.95 Announcement of base.

On or before February 25 of each year, the market administrator shall notify each producer, the handler receiving his milk and the cooperative association of which he is a member of the daily base established by such producer.

ADVERTISING AND PROMOTION PROGRAM

§ 1004.105 Dairy research and promotion order.

"Dairy Research and Promotion Order" means the order (7 CFR Part 1150) established by the Secretary pursuant to Title I, Subtitle B, of the Dairy and Tobacco Adjustment Act of 1983, Pub. L. 98-180, 97 Stat. 1128, as approved November 29, 1983, and any amendments thereto.

[49 FR 23030, June 4, 1984]

§ 1004.106 Qualified program.

"Qualified program" means a State or regional dairy product promotion, research or nutrition education program certified by the Secretary as a qualified program pursuant to § 1150.153 of the Dairy Research and Promotion Order.

[49 FR 23030, June 4, 1984]

§ 1004.110 Agency.

"Agency" means an agency organized by producers and producers' cooperative associations, in such form and with methods of operation specified in this part, which is authorized to expend funds made available pursuant to § 1004.121(b)(1), on approval by the Secretary, for the purposes of establishing or providing for establishment of research and development projects, advertising (excluding brand advertising), sales promotion, educational, and other programs, designed to improve or promote the domestic marketing and consumption of milk and its products. Members of the Agency shall serve without compensation but shall be reimbursed for reasonable expenses incurred in the performance of duties as members of the Agency.

§ 1004.111 Composition of the Agency.

Each cooperative association or combination of cooperative associations as provided for under § 1004.113(b) is authorized one Agency representative for each full 5 percent of the participating member producers (producers who have not requested refunds for the most recent quarter) it represents. Cooperative associations with less than 5 percent of the total participating producers that have elected not to combine pursuant to § 1004.113(b) and participating producers who are not members of cooperatives are authorized to select from such group, in total, one Agency representative for each full 5 percent that such producers constitute of the total participating producers. For the purpose of the Agency's initial organization, all persons defined as producers shall be considered as participating producers.

§ 1004.112 Term of office.

The term of office of each member of the Agency shall be 1 year, or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

§ 1004.113 Selection of Agency members.

The selection of Agency members shall be made pursuant to paragraphs (a), (b), and (c) of this section. Each person selected shall qualify by filing with the market administrator a written acceptance promptly after being notified of such selection.

(a) Each cooperative association authorized one or more representatives to the Agency shall notify the market administrator of the name and address of each representative who shall serve at the pleasure of the cooperative.

(b) For purposes of this program, cooperative associations may elect to combine their participating membership and, if the combined total of perticipating producers of such cooperative(s) is 5 percent or more of the total participating producers, such cooperative(s) shall be eligible to select a representative(s) to the Agency under the rules of § 1004.111 and paragraph (a) of this section.

(c) Selection of Agency members to represent participating nonmember producers and participating producer members of a cooperative association(s) having less than the required 5 percent of the producers participating in the advertising and promotion program and who have not elected to combine memberships as provided in paragraph (b) of this section, shall be supervised by the market administrator in the following manner:

(1) Promptly after the initial effective date of the advertising and promotion program under this order, and annually thereafter, the market administrator shall give notice to participating producer members of such cooperative and participating nonmember producers of their opportunity to nominate one or more Agency representatives, as the case may be, and also shall specify the number of representatives to be selected.

(2) Following the closing date for nominations, the market administrator shall announce the nominees who are eligible for Agency membership and shall conduct a referendum among the individual producers eligible to vote. Election to membership shall be determined on the basis of the nominee (or nominees) receiving the largest number of eligible votes. If an elected representative subsequently discontinues producer status or is otherwise unable to complete his term of office, the market administrator shall appoint as his replacement the participating producer who received the next highest number of eligible votes.

[40 FR 18753, Apr. 30, 1975, as amended at 41 FR 46449, Oct. 21, 1976]

§ 1004.114 Agency operating procedure.

A majority of the Agency members shall constitute a quorum and any action of the Agency shall require a majority of concurring votes of those present and voting.

§ 1004.115 Powers of the Agency.

The Agency is empowered to:

(a) Administer the terms and provisions within the scope of Agency authority pursuant to § 1004.110;

(b) Make rules and regulations to effectuate the purposes of Pub. L. 91-670;

(c) Recommend amendments to the Secretary; and

(d) With the approval of the Secretary, enter into contracts and agreements with persons or organizations as deemed necessary to carry out advertising and promotion programs and projects specified in §§ 1004.110 and 1004.117.

§ 1004.116 Duties of the Agency.

The Agency shall perform all duties necessary to carry out the terms and provisions of this program including, but not limited to, the following:

(a) Meet, organize, and select from among its members a chairman and such other officers and committee as may be necessary, and adopt and make public such rules as may be necessary for the conduct of its business;

(b) Develop programs and projects pursuant to §§ 1004.110 and 1004.117;

(c) Keep minutes, books, and records and submit books and records for examination by the Secretary and furnish any information and reports requested by the Secretary;

(d) Prepare and submit to the Secretary for approval prior to each quarterly period a budget showing the projected amounts to be collected during the quarter and how such funds are to be disbursed by the Agency;

(e) When desirable, establish an advisory committee(s) of persons other than Agency members;

(f) Employ and fix the compensation of any person deemed to be necessary to its exercise of powers and performance of duties;

(g) Establish the rate of reimbursement to the members of the Agency for expenses in attending meetings, and pay the expenses of administering the Agency; and

(h) Provide for the bonding of all persons handling Agency funds in an amount and with surety thereon satisfactory to the Secretary.

§ 1004.117 Advertising, research, education, and promotion program.

The Agency shall develop and submit to the Secretary for approval all programs or projects undertaken under the authority of this part. Such programs or projects may provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of milk and milk products on a nonbrand basis.

(b) The utilization of the services of other organizations to carry out Agency programs and projects if the Agency finds that such activities will benefit producers under this part; and

(c) The establishment, support, and conduct of research and development projects and studies that the Agency finds will benefit all producers under this part.

§ 1004.118 Limitation of expenditures by the Agency.

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1004.121(b)(1) shall be utilized for administrative expense of the Agency.

(b) Agency funds shall not, in any manner, be used for political activity or for the purpose of influencing governmental policy or action, except in recommending to the Secretary amendments to the advertising and promotion program provisions of this part.

(c) Agency funds may not be expended to solicit producer participation.

(d) Agency funds may be used only for programs and projects promoting the domestic marketing and consumption of milk and its products.

§ 1004.119 Personal liability.

No member of the Agency shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member in performance of his duties, except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

§ 1004.120 Procedure for requesting refunds.

Any producer may apply for refund under the procedure set forth under paragraphs (a) through (c) of this section.

(a) Refund shall be accomplished only through application filed with the market administrator in the form prescribed by the market administrator and signed by the producer. Only that information necessary to identify the producer and the records relevant to the refund may be required of such producer. As long as the Dairy Research and Promotion Order is in effect, any producer who files a request for refund in accordance with this section may designate a qualified program to receive such refund.

(b) Except as provided in paragraph (c) of this section, the request must be submitted within the first 15 days of December for milk to be marketed during the following calendar year and during the first 15 days of March, June, or September for milk to be marketed from the first of the immediately following month through the remainder of the calendar year.

(c) Upon first acquiring producer status under this part, a dairy farmer shall, upon application filed with the market administrator pursuant to paragraph (a) of this sectin by the end of the month immediately following the month in which producer status is acquired, be eligible for refund on all marketings against which an assessment is withheld during the current calendar year and if producer status was first acquired in December such producer shall be eligible for a refund on all marketings during December and the following calendar year.

(d) A producer, located in a State which has a State advertising and promotion program in which producers are required to participate unless they are participating in an advertising and promotion program under a Federal order, may (in lieu of a refund request) authorize the market administrator to pay to the State the amount of his required participation not in excess of the rate computed pursuant to § 1004.121(e): *Provided*, That such payments are payments to a qualified program.

[40 FR 18753, Apr. 30, 1975, as amended at 45 FR 23403, Apr. 7, 1980; 49 FR 23030, June 4, 1984]

§ 1004.121 Duties of the market administrator.

Except as specified in § 1004.116, the market administrator, in addition to other duties specified by this part, shall perform all the duties necessary to administer the terms and provisions of the advertising and promotion program including, but not limited to, the following:

(a) Within 30 days after the initial effective date of the advertising and promotion program under this order, and annually thereafter, conduct a referendum to determine representation on the Agency pursuant to § 1004.113(c);

(b) Set aside into an advertising and promotion fund, separately accounted for, an amount equal to the withholding rate for the month as set forth in paragraph (e) of this section times the amount of producer milk included in the computation of uniform prices for such month. The amount set aside shall be disbursed as follows:

(1) To the Agency each month, all such funds less any necessary amount held in reserve to cover refunds pursuant to paragraphs (b) (4) and (5) of this section; payments, if any, to producers or states pursuant to paragraphs (b) (2) and (3) of this section; and payments to cover expenses of the market administrator incurred in the administration of the advertising and promotion program (including audit).

(2) To producers, a refund of the amounts of mandatory checkoff for advertising and promotion programs which are qualified programs and are required under authority of State law applicable to such producers, but not in amounts that exceed the rate per hundredweight determined pursuant to paragraph (e) of this section on the volume of milk pooled by any such producer for which deductions were made pursuant to this paragraph.

(3) To any State, a payment on behalf of any producer for which a specific authorization has been received pursuant to § 1004.120(d), but not in amounts that exceed the rate per hundredweight determined pursuant to paragraph (e) of this section on the volume of milk pooled by any such producers for which deductions were made pursuant to this paragraph.

(4) As long as the Dairy Research and Promotion Order is in effect, paragraph (b)(5) of this section shall apply in lieu of this paragraph. After the end of each month, make a refund to each producer who made application for such refund pursuant to § 1004.120. Such refund shall be computed by multiplying the rate specified in paragraph (e) of this section times the hundredweight of such producer's milk pooled for which deductions were made pursuant to this paragraph for such month, less the amount of any refund otherwise made to, or on behalf of, the producer pursuant to paragraphs (b) (2) and (3) of this section.

(5) As long as the Dairy Research and Promotion Order is in effect, remit to any qualified programs any refunds designated by producers to be paid to such programs. If a refund request does not designate a qualified program to receive such money, the refund shall be remitted to the National Dairy Promotion and Research Board, which is defined in the Dairy Research and Promotion Order. Such refund shall be computed by multiplying the rate specified in paragraph (e) of this section times the hundredweight of such producer's milk pooled for which deductions were made pursuant to this paragraph for such month, less the amount of any refund otherwise made to, or on behalf of, the producer pursuant to paragraph (b) (2) or (3) of this section.

(c) Promptly after the issuance of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1004.105 through 1004.122).

(d) Audit the Agency's records of receipts and disbursements.

(e) As soon as possible after September of each year compute the rate of withholding as follows:

(1) Compute the simple average of the monthly weighted average prices

for the six-month period ending September 30; and

(2) Multiply the price computed pursuant to paragraph (e)(1) of this section by one percent and round to the nearest full cent. This rate shall apply during the following calendar year: *Provided*, That as long as the National Promotion and Research Order is in effect, the rate of withholding shall be 10 cents per hundredweight, except that for milk marketed during the month of May 1984, the rate of withholding shall be 14 cents per hundredweight.

(f) As soon as possible after the rate of withholding is computed, notify in writing each producer currently on the market and any new producer that subsequently enters the market of the withholding rate. This notification shall be repeated annually thereafter only if there is any change in the rate from the previous period.

[40 FR 18753, Apr. 30, 1975, as amended at 41 FR 46449, Oct. 21, 1976; 45 FR 23403, Apr. 7, 1980; 49 FR 23030, 23031, June 4, 1984]

§ 1004.122 Liquidation.

In the event that the provisions of this advertising and promotion program are terminated, any remaining uncommitted funds applicable thereto shall revert to the producer-settlement fund of § 1004.70.

PART 1006—MILK IN UPPER FLORIDA MARKETING AREA

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AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

SOURCE: 37 FR 17725, Aug. 30, 1972, unless otherwise noted.

GENERAL PROVISIONS

§ 1006.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1006.2 Upper Florida marketing area.

The "Upper Florida marketing area", hereinafter called the "marketing area", means all the territory geographically within the boundaries of the following counties, all in the State of Florida, including all waterfront facilities connected therewith and all territory wholly or partly therein occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments.

Alachua, Baker, Bay, Bradford, Brevard, Calhoun, Citrus, Clay, Columbia, Dixie, Duval, Flagler, Franklin, Gadsden, Gilchrist, Gulf, Hamilton, Holmes, Jackson, Jefferson, Lafayette, Lake, Leon, Levy, Liberty, Madison, Marion, Nassau, Orange, Osceola, Putnam, St. Johns, Seminole, Sumter, Suwannee, Taylor, Union, Volusia, Wakulla, Washington.

§ 1006.3 Route disposition.

"Route disposition" means a delivery (except to a plant) either direct or through any distribution facility (including disposition from a plant store, vendor, or vending machine) of a fluid milk product classified as Class I milk.

§ 1006.4 [Reserved]

§ 1006.5 Distributing plant.

"Distributing plant" means a plant:

(a) That is approved by a duly constituted health authority for the processing or packaging of Grade A milk and from which there is route disposition of any fluid milk product during the month in the marketing area; or

(b) That processes or packages filled milk and from which there is route disposition of filled milk during the month in the marketing area.

§ 1006.6 Supply plant.

"Supply plant" means a plant from which a fluid milk product acceptable to a duly constituted health authority or filled milk is shipped during the month to a pool plant.

§ 1006.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) A distributing plant from which not less than 50 percent of the total Grade A fluid milk products, except filled milk, received at the plant during the month is disposed of as route disposition except as filled milk and not less than 10 percent of such receipts is disposed of in the marketing area as route disposition except as filled milk; or

(b) A supply plant from which not less than 50 percent of the Grade A milk received from dairy farmers at such plant during the month is shipped as fluid milk products, except filled milk, to pool plants pursuant to paragraph (a) of this section; or

(c) A plant, other than a distributing plant, that is located in the marketing area and is operated by a cooperative association if pool plant status under this paragraph is requested for such plant by the cooperative association and 50 percent or more of the producer milk of members of the cooperative assoication is received at pool distributing plants either directly from farms or by transfer from plants of the cooperative association for which pool plant status under this paragraph has been requested, subject to the following conditions:

(1) The plant is approved by a duly constituted health authority for the disposition of Grade A milk in the marketing area; and

(2) The plant does not qualify as a pool plant under paragraph (b) of this section or under the provisions of another Federal order applicable to a supply plant.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant; and

(2) A plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act, unless such plant meets the requirements of paragraph (a) or (b) of this section and a greater volume of fluid milk products, except filled milk, is disposed of from such plant in this

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marketing area as route disposition and to pool plants qualified on the basis of route disposition in this marketing area than in the marketing area regulated pursuant to such other order.

[37 FR 17725, Aug. 30, 1972, as amended at 42 FR 21603, Apr. 28, 1977]

§ 1006.8 Nonpool plant.

"Nonpool plant" means a plant (except a pool plant) which receives milk from dairy farmers or is a milk or filled milk manufacturing, processing or bottling plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Exempt distributing plant" means a distributing plant operated by a governmental agency.

(d) "Partially regulated distributing plant" means a nonpool plant that is a distributing plant and is not an other order plant, a producer-handler plant or an exempt distributing plant.

(e) "Unregulated supply plant" means a nonpool plant that is a supply plant and is not an other order plant, a producer-handler or an exempt distributing plant.

§ 1006.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) Any cooperative association with respect to producer milk which it causes to be diverted from a pool plant to a nonpool plant for the account of such cooperative association;

(c) A cooperative association with respect to milk of its producer-members which is delivered from the farm to the pool plant of another handler in a tank truck owned and operated by or under contract to such cooperative association. The milk for which a cooperative association is the handler pursuant to this paragraph shall be deemed to have been received at the location of the pool plant to which it was delivered;

(d) Any person in his capacity as the operator of a partially regulated distributing plant;

(e) A producer-handler; or

(f) Any person in his capacity as the operator of an other order plant that is either a distributing plant or a supply plant.

§ 1006.10 Producer-handler.

"Producer-handler" means any person who meets all the following conditions:

(a) Operates a dairy farm(s) from which the milk produced thereon is supplied to a plant operated by him in accordance with the requirements set forth in paragraph (b) of this section, and provides proof satisfactory to the market administrator that:

(1) The full maintenance of milk-producing cows on such farm(s) is at his sole risk and under his complete and exclusive management and control; and

(2) Each such farm is owned or operated by him, at his sole risk, and under his complete and exclusive management and control;

(b) Operates a plant in which milk approved by a duly constituted health authority for fluid consumption is processed or packaged and from which there is route disposition during the month in the marketing area pursuant to the following requirements:

(1) No fluid milk products are received at such plant or by him at any other location, except:

(i) From dairy farm(s) as specified in paragraph (a) of this section; and

(ii) Fluid milk products (other than whole milk) from pool plants in an amount that is not in excess of the lesser of 5,000 pounds or 5 percent of his Class I sales during the month;

(2) Such plant is operated under his complete and exclusive management and control and at his sole risk, and is not used during the month to process, package, receive or otherwise handle fluid milk products for any other person; and

(c) Disposes of no other source milk (except that represented by nonfat solids used in the fortification of fluid milk products) as Class I milk.

§ 1006.11 [Reserved]

§ 1006.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the inspection requirements of a duly constituted health authority, which milk is received at a pool plant or diverted pursuant to § 1006.13 from a pool plant to a nonpool plant.

(b) The term "producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) The operator of an exempt distributing plant; or

(3) Any person with respect to milk produced by him that is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I milk under the provisions of such other order.

[41 FR 43155, Sept. 30, 1976]

§ 1006.13 Producer milk.

"Producer milk" means the skim milk and butterfat contained in milk:

(a) Received at a pool plant directly from a producer or a handler described in § 1006.9(c): *Provided*, That if the milk received at a pool plant from a handler described in § 1006.9(c) is purchased on a basis other than farm weights, the amount by which the total farm weights of such milk exceed the weights on which the pool plant's purchases are based shall be producer milk received by the handler described in § 1006.9(c) at the location of the pool plant; or

(b) Diverted from a pool plant to a nonpool plant, other than a producer-handler plant, for the account of the pool plant operator or a cooperative association in any month in which not less than 10 days' production of the producer whose milk is diverted is physically received at a pool plant, subject to the following:

(1) Milk so diverted for the account of a handler operating a pool plant shall be deemed to have been received by the handler at the plant to which diverted and if diverted for the account of a cooperative association, shall be deemed to have been received by the cooperative association at the location of the plant to which diverted;

(2) If diverted from the pool plant of another handler for the account of a cooperative association, the aggregate quantity of milk of member producers of the cooperative association so diverted that exceeds 25 percent of the milk physically received from member-producers at pool plants during the month shall not be deemed to have been received at a pool plant and shall not be producer milk;

(3) If diverted by a handler operating a pool plant for his account, the aggregate quantity of producer milk so diverted that exceeds 25 percent of the aggregate quantity of milk physically received from producers at such plant during the month shall not be deemed to have been received at a pool plant and shall not be producer milk; and

(4) The diverting handler shall designate the dairy farmers whose milk is not producer milk pursuant to paragraphs (b) (2) and (3) of this section. If the handler fails to make such designation no milk diverted by him shall be producer milk.

[37 FR 17725, Aug. 30, 1972, as amended at 41 FR 43156, Sept. 30, 1976]

§ 1006.14 Other source milk.

"Other source milk" means the skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk fluid cream products from any source except:

(1) Producer milk;

(2) Such products from pool plants; and

(3) Such products in inventory at the beginning of the month;

(b) Receipts of packaged fluid cream products and eggnog from other plants;

(c) Products, other than fluid milk products and fluid cream products, from any source (including those produced at the plant) which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Any disappearance of nonfluid products in a form in which they may be converted into a Class I product and which are not otherwise accounted for.

[41 FR 43156, Sept. 30, 1976, as amended at 46 FR 51234, Oct. 19, 1981]

§ 1006.15 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, acidophilus milk, flavored milk, flavored milk drinks (including milkshake mix), filled milk, and concentrated milk.

[46 FR 51234, Oct. 19, 1981]

§ 1006.16 Fluid cream product.

"Fluid cream product" means sweet cream or a mixture of sweet cream and milk or skim milk containing 9 percent or more butterfat. The term "fluid cream product" shall not include aerated cream and aerated cream products.

[41 FR 43156, Sept. 30, 1976]

§ 1006.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1006.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines after application by the association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and be engaged in making collective sales of or marketing milk or milk products for its members.

§ 1006.19 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1006.51a:

(a) *Butter price.* "Butter price" means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) *Cheddar cheese price.* "Cheddar cheese price" means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) *Nonfat dry milk price.* "Nonfat dry milk price" means the simple average, for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Division as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States pro-

duction area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding work-day until the day such prices were previously reported. A work-day is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price.* "Edible whey price" means the simple average for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

[47 FR 42964, Sept. 30, 1982]

HANDLER REPORTS

§ 1006.30 Reports of receipts and utilization.

On or before the 7th day after the end of each month, each handler (except a handler described in § 1006.9(e) or (f)) shall report to the market administrator for such month with respect to each plant at which milk is received or at which filled milk is processed or packaged, reporting in detail and on forms prescribed by the market administrator;

(a) The quantities of skim milk and butterfat contained in or represented by:

(1) Producer milk (or, in the case of handlers described in § 1006.9(d), Grade A milk received from dairy farmers);

(2) Fluid milk products and bulk fluid cream products received from pool plants of other handlers;

(3) Other source milk;

(4) Milk diverted to nonpool plants pursuant to § 1006.13; and

(5) Inventories of fluid milk products and fluid cream products at the beginning and end of the month;

(b) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including a separate statement showing:

(1) The respective amounts of skim milk and butterfat disposed of as route disposition in the marketing area, showing separately the in-area disposition of filled milk; and

(2) For a handler described in § 1006.9(d), the amount of reconstituted skim milk in fluid milk products disposed of in the marketing area as route disposition; and

(c) Such other information with respect to the receipts and utilization of skim milk and butterfat as the market administrator may prescribe.

[37 FR 17725, Aug. 30, 1972, as amended at 41 FR 43156, Sept. 30, 1976]

§ 1006.31 Payroll reports.

(a) Each handler described in § 1006.9(a), (b), and (c) shall report to the market administrator in detail and on forms prescribed by the market administrator on or before the 20th day after the end of the month his producer payroll for such month which shall show for each producer:

(1) His identity;

(2) The quantity of milk received from such producer and the number of days, if less than the entire month, on which milk was received from such producer;

(3) The average butterfat content of such milk; and

(4) The net amount of such handler's payment, together with the price paid and the amount and nature of any deductions.

(b) Each handler operating a partially regulated distributing plant who does not elect to make payments pursuant to § 1006.76(b) shall report to the market administrator on or before

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the 20th day after the end of the month the same information required of handlers pursuant to paragraph (a) of this section. In such report, payments to dairy farmers delivering Grade A milk shall be reported in lieu of payments to producers.

§ 1006.32 Other reports.

(a) Each producer-handler shall make reports to the market administrator at such time and in such manner as the market administrator may prescribe.

(b) Each handler who operates an other order plant shall report total receipts and utilization or disposition of skim milk and butterfat at the plant at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(c) Each handler described in § 1006.9(c) shall report to the market administrator, in detail and on forms prescribed by the market administrator on or before the 7th day after the end of the month the quantities of skim milk and butterfat in producer milk delivered to each pool plant in such month.

CLASSIFICATION OF MILK

§ 1006.40 Classes of utilization.

Subject to the conditions set forth in §§ 1006.41 through 1006.44, all skim milk and butterfat required to be reported by a handler pursuant to § 1006.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as provided in paragraph (b) of this section;

(2) In packaged fluid-milk products in inventory at the end of the month; and

(3) Not accounted for as Class II milk.

(b) *Class II milk.* Class II milk shall be:

(1) Skim milk and butterfat used to produce frozen desserts (e.g., ice cream, ice cream mix), sour cream, sour cream products (e.g., dips), yogurt, aerated cream and aerated cream products, butter, cheese (including cottage cheese), evaporated and condensed milk (plain or sweetened), nonfat dry milk, dry whole milk, dry whey, condensed or dry buttermilk, and a product which contains 6 percent or more nonmilk fat (or oil);

(1-a) Skim milk and butterfat disposed of in eggnog and in the form of a fluid cream product;

(2) Skim milk and butterfat in fluid milk products disposed of by a handler for livestock feed;

(3) Skim milk and butterfat in fluid milk products dumped by a handler after notification to, and opportunity for verification by, the market administrator;

(4) Skim milk and butterfat in inventory of eggnog, fluid cream products, and bulk fluid milk products at the end of the month;

(5) Skim milk represented by the nonfat solids added to a fluid milk product which is in excess of an equivalent volume of such product prior to the addition;

(6) Skim milk and butterfat, respectively, in shrinkage at each pool plant (except in milk diverted to a nonpool plant pursuant to § 1006.13) but not in excess of:

(i) 2 percent of producer milk (except that received from a handler described in § 1006.9(c));

(ii) Plus 1.5 percent of producer milk received from a handler described in § 1006.9(c): *Provided*, That if the handler receiving such milk files notice with the market administrator that he is purchasing such milk on the basis of farm weights, the applicable percentage pursuant to this paragraph (b)(6)(ii) shall be 2 percent:

(iii) Plus 1.5 percent of bulk fluid milk products received from other pool plants;

(iv) Plus 1.5 percent of bulk fluid milk products received from other order plants exclusive of the quantity for which Class II utilization was requested by the operators of both plants;

(v) Plus 1.5 percent of bulk fluid milk products from unregulated supply plants exclusive of the quantity for which Class II utilization was requested by the handler;

(vi) Less 1.5 percent of bulk fluid milk products transferred to other plants; and

(7) Skim milk and butterfat in shrinkage of other source milk allocated pursuant to § 1006.41(b)(2).

[37 FR 17725, Aug. 30, 1972, as amended at 46 FR 51235, Oct. 19, 1981]

§ 1006.41 Shrinkage.

The market administrator shall allocate shrinkage over each pool plant's receipts as follows:

(a) Compute the total shrinkage of skim milk and butterfat, respectively, for each pool plant; and

(b) Prorate the resulting amounts between the receipts of skim milk and butterfat, respectively, in:

(1) The net quantity of producer milk and other fluid milk products specified in § 1006.40(b)(6); and

(2) Other source milk exclusive of that specified in § 1006.40(b)(6).

§ 1006.42 Classification of transfers and diversions.

Skim milk or butterfat shall be classified:

(a) At the utilization indicated by the operators of both plants, otherwise as Class I milk, if transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to the pool plant of another handler, subject to the following conditions:

(1) The skim milk or butterfat so assigned to each class shall be limited to the amount thereof remaining in such class in the transferee plant after computations pursuant to § 1006.44(a)(9) and the corresponding step of § 1006.44(b);

(2) If the transferor plant received during the month other source milk to be allocated pursuant to § 1006.44(a)(3), the skim milk and butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor handler received during the month other source milk to be allocated pursuant to § 1006.44(a)(8) or (9) and the corresponding steps of § 1006.44(b), the skim milk and butterfat so transferred up to the total of such receipts shall not be classified as Class I milk to a greater extent than would be applicable to a like quantity of such other source milk received at the transferee plant.

(b) As Class I milk, if transferred or diverted in the form of a fluid milk product or a bulk fluid cream product to a nonpool plant that is not an other order plant, a producer-handler plant, or an exempt distributing plant, unless the requirements of paragraphs (b) (1) and (2) of this section are met, in which case the skim milk and butterfat so transferred or diverted shall be classified in accordance with the assignment resulting from paragraph (b)(3) of this section.

(1) The transferring or diverting handler claims classification in Class II in his report submitted pursuant to § 1006.30;

(2) The operator of such nonpool plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for the purpose of verification; and

(3) The skim milk and butterfat so transferred (in excess of receipts of skim milk and butterfat at the pool plant from such nonpool plant) shall be classified on the basis of the following assignment of utilization at such nonpool plant in excess of receipts of packaged fluid milk products from all pool plants and other order plants:

(i) Any Class I route disposition in the marketing area, then any transfers from such nonpool plant to pool plants which are assigned to Class I pursuant to § 1006.44(a)(8) and the corresponding step of § 1006.44(b), shall be assigned first to the skim milk and butterfat in the fluid milk products so transferred or diverted from pool plants, next pro rata to such receipts from other order plants, and thereafter to receipts from dairy farmers who the market administrator determines constitute the regular source of supply of Grade A milk for such nonpool plant;

(ii) Any Class I route disposition in the marketing area of an other order issued pursuant to the Act, then any transfers from such nonpool plant to an other order plant which are assigned to Class I pursuant to the provisions of such other order, shall be assigned first to the skim milk and but-

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terfat in receipts of fluid milk products transferred or diverted from plants fully regulated by such order, next pro rata to such receipts from pool plants and other order plants not regulated by such order, and thereafter to receipts from dairy farmers who the market administrator determines constitute the regular source of supply for such nonpool plant;

(iii) Class I utilization in excess of that assigned pursuant to paragraphs (b)(3)(i) and (ii) of this section shall be assigned first to remaining receipts from dairy farmers who the market administrator determines constitute the regular source of supply for such nonpool plant and Class I utilization in excess of such receipts shall be assigned pro rata to unassigned receipts at such nonpool plant from all pool and other order plants; and

(iv) To the extent that Class I utilization is not so assigned to it, the skim milk and butterfat so transferred shall be classified as Class II milk.

(c) As follows, if transferred or diverted in the form of a fluid milk product or a bulk fluid cream product to an other order plant in excess of receipts of fluid milk products or bulk fluid cream products, respectively, from such plant in the same category as described in paragraph (c)(1), (2), or (3) of this section:

(1) If transferred in packaged form, classification shall be in the classes to which allocated under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (c)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II milk to the extent of the Class II utilization (or comparable utilization under such other order) available for such assignment pursuant to the allocation provisions of the other order;

(4) If information concerning the classification to which allocated under the other order is not available to the market administrator for purposes of establishing classification pursuant to this paragraph, classification shall be as Class I subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and allocations to other classes shall be classified in a comparable classification as Class II milk; and

(6) If the form in which any fluid milk product is transferred to an other order plant is not defined as a fluid milk product under such other order, classification shall be in accordance with the provisions of § 1006.40.

(d) As Class I milk if transferred or diverted in the form of a fluid milk product from a pool plant to an exempt distributing plant.

(e) As Class I milk if transferred in the form of a fluid milk product from a pool plant to a producer-handler plant.

[37 FR 17725, Aug. 30, 1972, as amended at 41 FR 43156, Sept. 30, 1976]

§ 1006.43 General classification rules.

In determining the classification of producer milk pursuant to § 1006.44, the following rules shall apply:

(a) Each month, the market administrator shall correct for mathematical and other obvious errors all reports submitted pursuant to § 1006.30 and from such reports, shall compute for each handler the total pounds of skim milk and butterfat in each class.

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk used or disposed of in such product shall be considered to be a quantity equivalent to the nonfat milk solids contained in such product plus all the water originally associated with such solids.

§ 1006.44 Classification of producer milk.

After making the computations pursuant to § 1006.43, the market administrator shall determine the classification of producer milk for each handler for each month as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class II the pounds of skim milk classified as Class II pursuant to § 1006.40(b)(6);

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to paragraph (a)(3)(vi) of this section, as follows:

(i) From Class II milk, the lesser of the pounds remaining or the quantity associated with such receipts and classified as Class II pursuant to § 1006.40(b)(5) plus 2 percent of the remainder of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(2-a) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any order issued pursuant to the Act is classified and priced as Class I milk at plant of origin and is not used as an offset on any other payment obligation pursuant to any other order;

(2-b) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in fluid cream products that were received in packaged form from other plants;

(2-c) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in each of the following:

(i) Inventory of eggnog at the beginning of the month; and

(ii) Inventory of packaged fluid cream products at the beginning of the month;

(3) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in each of the following:

(i) Other source milk, except that received in the form of a fluid milk product, that was not subtracted pursuant to paragraph (a)(2-b) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established, and receipts of fluid milk products from unidentified sources;

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order;

(iv) Receipts of fluid milk products from an exempt distributing plant;

(v) Receipts from unregulated supply plants consisting of reconstituted skim milk (including that in filled milk) and any skim milk received at the unregulated plant from producer-handlers and exempt plants defined in any order that were not subtracted pursuant to paragraph (a)(2-a) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor plant;

(4) Subtract from the remaining pounds of skim milk in Class I the pounds of skim milk in inventory of packaged fluid milk products at the beginning of the month: *Provided*, That this paragraph shall not be applicable to a pool plant in any month immediately following a month in which such plant was not fully subject to the pooling and pricing provisions of this order;

(5) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II but not in excess of such quantity or quantities:

(i) Receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2-a) and (3)(v) of this section:

(*a*) For which the handler requests such utilization; or

(*b*) Which are in excess of the pounds of skim milk determined by subtracting from 125 percent of the pounds of skim milk remaining in Class I milk, the sum of the pounds of skim milk in producer milk, in receipts of fluid milk products from pool plants of other handlers, and in receipts of fluid milk products in bulk from other order plants that were not subtracted pursuant to paragraph (a)(3)(vi) of this section:

(ii) Receipts of fluid milk products in bulk from an other order plant that were not subtracted pursuant to paragraph (a)(3)(vi) of this section, in excess of similar transfers to such plant, if Class II utilization was requested by the operator of such plant and the handler;

(6) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class II milk, the pounds of skim milk in inventory of fluid milk products and bulk fluid cream products at the beginning of the month that were not subtracted pursuant to paragraph (a)(4) of this section;

(7) Add to the remaining pounds of skim milk in Class II milk the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(8) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to paragraphs (a) (2-a), (3)(v), and (5)(i) of this section;

(9) Subtract from the pounds of skim milk remaining in each class, in the following order, the pounds of skim milk in receipts of fluid milk products in bulk from other order plants, in excess in each case of similar transfers to the same plant, that were not subtracted pursuant to paragraphs (a)(3)(vi) and (5)(ii) of this section:

(i) In series beginning with Class II, the pounds determined by multiplying the pounds of such receipts by the larger of the percentage of estimated Class II utilization of skim milk announced for the month by the market administrator pursuant to § 1006.45(a) or the percentage that Class II utilization remaining is of the total remaining utilization of skim milk of the handler; and

(ii) From Class I, the remaining pounds of such receipts;

(10) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products and bulk fluid cream products received from pool plants of other handlers according to the classification of such products pursuant to § 1006.42(a); and

(11) If the pounds of skim milk remaining exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class II. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section;

(c) Determine the weighted average butterfat content of producer milk in each class as computed pursuant to paragraphs (a) and (b) of this section.

[37 FR 17725, Aug. 30, 1972, as amended at 41 FR 43156, Sept. 30, 1976; 46 FR 51235, Oct. 19, 1981]

§ 1006.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for purposes of allocating receipts from other order plants pursuant to § 1006.44(a)(9) and the corresponding step of § 1006.44(b), the market administrator shall estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1006.44 on the basis of such report, and thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products of bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month, report to each cooperative association, upon request by such association, the percentage of the milk caused to be delivered by the cooperative association for its members which was utilized in each class at each pool plant receiving such milk. For the purpose of this report, the milk so received shall be allocated to each class at each pool plant in the same ratio as all producer milk received at such plant during the month.

[37 FR 17725, Aug. 30, 1972, as amended at 41 FR 43156, Sept. 30, 1976]

Class Prices

§ 1006.50 Class prices.

Subject to the provisions of § 1006.52, the class prices per hundredweight for the month shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.85, and plus $0.20 for the months of September 1984 through February 1985.

(b) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price computed pursuant to § 1006.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, except that in no event shall the final Class II price be less than the basic formula price: *Provided,* That for the first month this paragraph is effective the Class II price shall be the basic formula price for the month plus 15 cents.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1006.51 and add 15 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1006.51a.

[37 FR 17725, Aug. 30, 1972, as amended at 42 FR 46914, Sept. 19, 1977; 47 FR 42964, Sept. 30, 1982; 49 FR 34800, Sept. 4, 1984]

§ 1006.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the mid-point of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1006.51a Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1006.51 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1006.19 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighing factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following subparagraphs is of the total of the data represented in paragraphs (c) (1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Statistical Reporting Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Statistical Reporting Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

[47 FR 42964, Sept. 30, 1982]

§ 1006.52 Plant location adjustments for handlers.

(a) The Class I price for producer milk and other source milk at a plant located outside the State of Florida and more than 70 miles from the nearer of the City Halls of Jacksonville or Tallahassee, Florida, or within the State of Florida shall be adjusted at the rates set forth in the following schedule: *Provided*, That the resulting adjusted price for fluid milk products transferred from a pool plant to a plant regulated under another Federal order shall not be less than the Class I price under such other Federal order applicable at the location of the transferor plant:

Location of plant	Rate per cwt
Outside the State of Florida	
In excess of 70 but not more than 85 miles	Subtract 10 cents
For each additional 10 miles or fraction thereof	Subtract 1.5 cents
Inside the State of Florida	
South of a line forming the southern boundary of the counties of Alachua, Dixie, Gilchrist, Putnam, and St. Johns, but outside the defined marketing area of Part 1013	Add 10 cents
In the defined marketing area of Part 1013	Add 30 cents
North of a line forming the southern boundary of the counties of Alachua, Dixie, Gilchrist, Putnam, and St. Johns	No adjustment

(b) For the purpose of calculating location adjustments, receipts of fluid milk products from pool plants shall be assigned any remainder of Class I milk at the transferee plant that is in excess of the sum of producer milk receipts at such plant and that assigned as Class I to receipts from other order plants and unregulated supply plants. Such assignment shall be made in sequence according to the location adjustment applicable at each plant, beginning with the plant nearest the City Hall in Jacksonville, Orlando or Tallahassee, Fla.

[37 FR 17725, Aug. 30, 1972, as amended at 49 FR 37567, Sept. 25, 1984]

§ 1006.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the final Class II price for the preceding month, except that the Class II price announced for the first month during which this section is effective shall be the price specified in the proviso in § 1006.50(b); and on or before the 15th day of each month the tentative Class II price for the following month.

[47 FR 42965, Sept. 30, 1982]

§ 1006.54 Equivalent price.

If for any reason a price quotation required by this part for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price that is required.

UNIFORM PRICE

§ 1006.60 Handler's value of milk for computing uniform price.

The net pool obligation of each handler described in § 1006.9 (a), (b), and (c) during each month shall be a sum of money computed by the market administrator as follows:

(a) Multiply the quantity of producer milk in each class as computed pursuant to § 1006.44(c) by the applicable class price;

(b) Add the amount obtained from multiplying the overage deducted from each class pursuant to § 1006.44(a)(11) and the corresponding step of § 1006.44(b) by the applicable class prices, as adjusted by the butterfat differential specified in § 1006.74;

(c) Add the amount obtained from multiplying the difference between the Class II price for the preceding month and the Class I price for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1006.41(a)(6) and the corresponding step of § 1006.44(b);

(d) Add an amount determined by multiplying the difference between the Class I price for the preceding month and Class I price for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1006.44(a)(4) and the corresponding step of § 1006.44(b). If the Class I price for the current month is less than the Class I price for the preceding month, the result would be a minus amount;

(e) Add an amount equal to the difference between the Class I and Class II price values at the pool plant of the skim milk and butterfat (excluding that contained in receipts of bulk fluid cream products from an other order plant) subtracted from Class I pursuant to § 1006.44(a)(3) and the corresponding step of § 1006.44(b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1006.44(a)(3)(v) and (vi) and the corresponding step of § 1006.44 (b) the Class I price shall be adjusted to the location of the transferor-plant (but not to be less than the Class II price);

(f) Add the value at the Class I price adjusted for location of the nearest nonpool plant(s) from which an equivalent volume was received (but not to be less than the Class II price), of the skim milk and butterfat subtracted from Class I pursuant to § 1006.44(a)(8) and the corresponding step of § 1006.44(b), excluding such skim milk or butterfat in bulk receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by pool handlers defined in any order issued pursuant to the Act is classified and priced as Class I milk at plant of origin and is not used as an offset on any other payment obligation pursuant to any other order.

(g) For the first month that this paragraph is effective, subtract the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class II price, both for the preceding month, by the hundredweight of skim milk and butterfat in any fluid cream product that was in the handler's inventory at the end of the preceding month and classified as Class I milk.

(h) With respect to milk marketed on and after the effective date hereof, through February 1985, subtract the amount obtained by multiplying the pounds of bulk fluid milk products that were transferred to the handler's pool plant from another order plant and allocated to Class I milk, by a rate equal to 3.3 cents per hundredweight for each 10 miles or fraction thereof, less any difference (positive only) between the Class I differential applicable at the receiving plant less the Class I differential applicable at the shipping plant.

[37 FR 17725, Aug. 30, 1972, as amended at 41 FR 43157, Sept. 30, 1976; 42 FR 46914, Sept. 19, 1977; 49 FR 34800, Sept. 4, 1984]

§ 1006.61 Computation of uniform price.

For each month, the market administrator shall compute a uniform price for milk of 3.5 percent butterfat content as follows:

(a) Combine into one total the values computed pursuant to § 1006.60 for all handlers who filed the reports pursuant to § 1006.30 for the month, except those in default of payments required pursuant to § 1006.71 for the preceding month,

(b) [Reserved]

(c) Add an amount equal to the total value of the minus location adjustments computed pursuant to § 1006.75(a);

(d) Subtract an amount equal to the total value of the plus location adjustments computed pursuant to § 1006.75 (a);

(e) Add an amount equal to one-half the unobligated balance in the producer-settlement fund;

(f) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1006.60(f); and

(g) Subtract not less than 4 cents nor more than 5 cents per hundredweight.

[37 FR 17725, Aug. 30, 1972, as amended at 42 FR 46914, Sept. 19, 1977]

§ 1006.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 11th day after the end of each month the uniform price for such month.

[42 FR 46914, Sept. 19, 1977]

Payments for Milk

§ 1006.70 Producer-settlement fund.

The market administrator shall maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments into such fund pursuant to §§ 1006.71 and 1006.76 and out of which he shall make all payments from such fund pursuant to § 1006.72: *Provided*, That the market administrator shall offset the payment due to a handler against payments due from such handler.

§ 1006.71 Payments to the producer-settlement fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the total amounts specified in paragraph (a)(1) of this section exceed the amounts specified in paragraph (a)(2) of this section:

(1) The net pool obligation pursuant to § 1006.60 for such handler; and

(2) The sum of:

(i) The value of such handler's producer milk at the uniform price, as adjusted pursuant to § 1006.75; and

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(ii) The value at the uniform price applicable at the location of the plant(s) from which received (not to be less than the value at the Class II price) of other source milk for which a value is computed pursuant to § 1006.60(f).

(b) Each handler who operates an other order plant that is regulated under an order providing for individual-handler pooling shall pay to the market administrator for the producer-settlement fund, on or before the 25th day after the end of the month, an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of as route disposition in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant as route disposition in marketing areas regulated by two or more market pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each marketing area; and

(2) Compute the value of the quantity of reconstituted skim milk assigned in paragraph (b)(1) of this section to Class I disposition in this marketing area at the Class I price under this part applicable at the location of the other order plant (not to be less than the Class II price), and subtract its value at the Class II price.

[37 FR 17725, Aug. 30, 1972, as amended at 42 FR 46914, Sept. 19, 1977]

§ 1006.72 Payments from the producer-settlement fund.

On or before the 13th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1006.71(a)(2) exceeds the amount computed pursuant to § 1006.7(a)(1). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the funds are available.

§ 1006.73 Payments to producers and to cooperative associations.

(a) Except as provided in paragraph (b) of this section, each handler shall make payment for producer milk as follows:

(1) On or before the 20th day of the month to each producer who had not discontinued shipping milk to such handler before the 15th day of the month, not less than 85 percent of the uniform price for the preceding month per hundredweight of milk received during the first 15 days of the month, less proper deductions authorized in writing by such producer;

(2) On or before the 5th day of the following month to each producer who had not discontinued shipping milk to such handler before the last day of the month, not less than 85 percent of the uniform price for the preceding month per hundredweight of milk received from the 16th through the last day of the month, less proper deductions authorized in writing by such producer; and

(3) On or before the 15th day of each month to each producer for milk received during the preceding month, not less than the uniform price per hundredweight, adjusted pursuant to §§ 1006.74, 1006.75, and 1006.86, subject to the following:

(i) Minus payments made pursuant to paragraphs (a) (1) and (2) of this section;

(ii) Less proper deductions authorized in writing by such producer; and

(iii) If by such date such handler has not received full payment from the market administrator pursuant to § 1006.72 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after receipt of the balance due from the market administrator.

(b) In the case of a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and which has so requested any handler in writing, together with a written promise of such association to reimburse the handler the amount of any actual loss incurred by him because of any improper claim on the part of the association, such handler on or before the second day prior to the date on which payments are due individual producers, shall pay the cooperative association for milk received during the month from the producer-members of such association as determined by the market administrator an amount not less than the total due such producer-members pursuant to paragraph (a) of this section, subject to the following:

(1) Payment pursuant to this paragraph shall be made for milk received from any producer beginning on the first day of the month following receipt from the cooperative association of its certification that such producer is a member, and continuing through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the cooperative association; and

(2) Copies of the written request of the cooperative association to receive payments on behalf of its members, together with its promise to reimburse and its certified list of members shall be submitted simultaneously both to the handler and to the market administrator and shall be subject to verification by the market administrator at his discretion, through audit of the records of the cooperative association. Exceptions, if any, to the accuracy of such certification claimed by any producer or by a handler shall be made by written notice to the market administrator and shall be subject to his determination.

§ 1006.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A bulk butter per pound at Chicago, as reported by the Department for the month.

[42 FR 46914, Sept. 19, 1977]

§ 1006.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price for producer milk received at a pool plant shall be reduced or increased according to the location of the pool plant at the rates set forth in § 1006.52; and

(b) For purposes of computations pursuant to §§ 1006.71 and 1006.72, the uniform price shall be adjusted at the rates set forth in § 1006.52 applicable at the location of the nonpool plant from which the milk was received.

§ 1006.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month either of the amounts (at the handler's election) calculated pursuant to paragraph (a) or (b) of this section. If the handler fails to report pursuant to §§ 1006.30 and 1006.31(b) the information necessary to compute the amount specified in paragraph (a) of this section, he shall pay the amount computed pursuant to paragraph (b) of this section:

(a) An amount computed as follows:

(1) The obligation that would have been computed pursuant to § 1006.60 at such plant shall be determined as though such plant were a pool plant, subject to the following modifications:

(i) Receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant;

(ii) Transfers from such nonpool plant to a pool plant or an other order plant shall be classified in the class to which allocated at the pool plant or other order plant. Class I milk transferred from such nonpool plant to pool plants and other order plants shall be valued at the uniform price of the respective order, except that reconstituted skim milk (including that in filled milk), and milk or skim milk from producer-handlers and exempt

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plants defined in any order shall be valued at the Class II price. No obligation shall apply to Class I milk transferred to a pool plant or an other order plant if such Class I utilization is assigned to receipts at the partially regulated distributing plant from pool plants and other order plants at which such milk was classified and priced as Class I milk;

(iii) Such handler's obligation shall include any charges computed pursuant to § 1006.60(f) and any credits computed pursuant to § 1006.71(a)(2)(ii) with respect to receipts of Class I milk from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk (including that in filled milk), and milk or skim milk from producer-handlers and exempt plants defined in any order shall be at the Class II price, unless an obligation with respect to such plant is computed as specified in paragraph (a)(1)(iv) of this section;

(iv) If the operator of the partially regulated distributing plant so requests, and provides with his report pursuant to § 1006.30 a similar report for each nonpool plant which serves as a supply plant for such partially regulated distributing plant by shipments to such plant during the month equivalent to the requirements of § 1006.7(b) with agreement of the operator of such plant that the market administrator may examine the books and records of such plant for purposes of verification of such reports, there will be added the amount of the obligation computed at such nonpool supply plant in the same manner and subject to the same conditions as for the partially regulated distributing plant;

(2) From this obligation, deduct the sum of:

(i) The gross payments made by such handler, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1006.74, for Grade A milk received during the month from dairy farmers at such plant and like payments made by the operator of a supply plant(s) included in the computations pursuant to paragraph (a)(1) of this section; and

(ii) Payments to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant.

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as route disposition in the marketing area:

(2) Deduct the respective amounts of skim milk and butterfat received at the partially regulated distributing plant as follows:

(i) Any Class I milk from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act; and

(ii) Receipts from a nonpool plant that is not an other order plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such nonpool plant by handlers fully regulated under any order issued pursuant to the Act is classified and priced as Class I milk and is not used as an offset on any other payment obligation pursuant to any other order;

(3) Deduct from any remainder the quantity of reconstituted skim milk, and milk or skim milk contained in receipts from producer-handlers and exempt plants defined in any order disposed of as route disposition in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total; and

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the uniform price applicable at such location, and add for the quantity of milk deducted pursuant to paragraph (b)(3) of this section its value computed at the Class I price applicable at the location of the nonpool plant less the value of such milk at the Class II price. For purposes of this paragraph, the prices shall not be adjusted to less than the Class II price.

[37 FR 17725, Aug. 30, 1972, as amended at 42 FR 46914, Sept. 19, 1977]

§ 1006.77 Adjustment of accounts.

When verification by the market administrator of reports or payments of a handler discloses errors resulting in monies due the market administrator from such handler, such handler from the market administrator, or a producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made not later than the date for making payment next following such disclosure.

§ 1006.78 Charges on overdue accounts.

The unpaid obligation of a handler pursuant to §§ 1006.71, 1006.77, 1006.85, and 1006.86 shall be increased one-half of 1 percent for each month or portion thereof that such obligation is overdue.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1006.85 Assessment for order administration.

As his pro rata share of the expense of administration of this part, each handler shall pay to the market administrator on or before the 15th day after the end of the month 4 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to:

(a) Producer milk (including such handler's own production);

(b) Any other source milk allocated to Class I milk pursuant to § 1006.44(a)(3) and (8) and the corresponding step of § 1006.44(b), except such other source milk excluded from pool obligations pursuant to § 1006.60(e) and (f); and

(c) Class I milk disposed of in the marketing area from a partially regulated distributing plant that exceeds the hundredweight of Class I milk:

(1) Received during the month at such plant from pool plants and other order plants that is not used as an offset under a similar provision of another order issued pursuant to the Act; and

(2) Specified in § 1006.76(b)(2)(ii).

[37 FR 17725, Aug. 30, 1972, as amended at 41 FR 43157, Sept. 30, 1976]

§ 1006.86 Deduction for marketing services.

(a) Except as provided in paragraph (b) of this section, each handler in making payments for producer milk received during the month shall deduct 4 cents per hundredweight or such lesser amount as the Secretary may prescribe (except on such handler's own farm production) and shall pay such deductions to the market administrator not later than the 15th day after the end of the month. Such money shall be used by the market administrator to verify or establish weights, samples and tests of producer milk and to provide producers with market information. Such services shall be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him.

(b) In the case of producers for whom a cooperative association is performing, as determined by the Secretary, the services set for in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions as are authorized by such producers and, on or before the 15th day after the end of each month, pay over such deductions to the association rendering such services.

PART 1007—MILK IN GEORGIA MARKETING AREA

Subpart—Order Regulating Handling

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AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended (7 U.S.C. 601-674).

SOURCE: 39 FR 15762, May 6, 1974, unless otherwise noted.

GENERAL PROVISIONS

§ 1007.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1007.2 Georgia marketing area.

The "Georgia marketing area", hereinafter called the "marketing area", means all the territory, including all waterfront facilities connected therewith, geographically within the boundaries of the State of Georgia except the counties of Catoosa, Chattooga, Dade, Fannin, Murray, Rabun, Walker, and Whitfield. The marketing area shall include all territory that is occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments if any part of such territory is within the designated geographical limits of the marketing area.

§ 1007.3 Route disposition.

"Route disposition" means a delivery to a retail or wholesale outlet (except to a plant) either direct or through any distribution facility (including disposition from a plant store, vendor or vending machine) of a fluid milk product classified as Class I milk.

§ 1007.4 [Reserved]

§ 1007.5 Distributing plant.

"Distributing plant" means a plant in which milk approved by a duly constituted health authority for fluid consumption or filled milk is processed or packaged and which has route disposition in the marketing area during the month.

§ 1007.6 Supply plant.

"Supply plant" means a plant from which a fluid milk product acceptable to a duly constituted health authority for fluid consumption or filled milk is shipped during the month to a pool plant.

§ 1007.7 Pool plant.

Except as provided in paragraph (e) of this section, "pool plant" means:

(a) A distributing plant, other than a plant specified in paragraph (d) of this section, that has route disposition, except filled milk, during the month of not less than 50 percent of the fluid milk products, except filled milk, approved by a duly constituted health authority for fluid consumption that are physically received at such plant or diverted as producer milk to a nonpool plant pursuant to § 1007.13 and that has route disposition, except filled milk, in the marketing area during the month of not less than 15 percent of its total Class I disposition, except filled milk, during the month.

(b) A supply plant from which not less than 50 percent of the total quantity of milk approved by a duly constituted health authority for fluid consumption that is physically received from dairy farmers at such plant or diverted as producer milk to a nonpool plant pursuant to § 1007.13 during the month is shipped as fluid milk products, except filled milk, to pool plants pursuant to paragraph (a) or (d) of this section. A plant that was a pool plant pursuant to this paragraph in each of the immediately preceding months of August through February shall be a pool plant for the months of March through July unless the milk received at the plant does not continue to meet the requirements of a duly constituted health authority or a written application is filed by the plant operator with the market administrator on or before the first day of any such month requesting that the plant be designated as a nonpool plant for such month and each subsequent month through July during which it would not otherwise qualify as a pool plant.

(c) For the purpose of qualifying a supply plant under paragraph (b) of this section, a cooperative association supplying pool distributing plants during the month at least two-thirds of the producer milk of its members (including both milk delivered directly from their farms and that transferred from the supply plant(s) of the cooperative) may count (irrespective of other requirements of § 1007.9(c)) as shipments from the plant to pool distributing plants the milk delivered to pool distributing plants under § 1007.9(c); in the event the cooperative operates more than one supply plant, all such deliveries shall be assigned, for this purpose, to the supply plant nearest Atlanta, Ga.

(d) A distributing plant that meets the following conditions:

(1) The plant is located in the marketing area;

(2) The plant has route disposition, except filled milk, during the month of not less than 50 percent of the fluid milk products, except filled milk, approved by a duly constituted health authority for fluid consumption that are physically received at such plant or diverted as producer milk to a nonpool plant pursuant to § 1007.13; and

(3) The principal activity of such plant is the processing and distribution of aseptically processed fluid milk products.

(e) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) An exempt distributing plant; and

(3) A plant (except a plant that is a pool plant pursuant to paragraph (d) of this section) that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act, unless such plant is qualified as a pool plant pursuant to paragraphs (a) or (b) of this section and a greater volume of fluid milk products, except filled milk, is disposed of from such plant in this marketing area as route disposition and to pool plants pursuant to paragraphs (a) or (d) of this section than is disposed of from such plant in the marketing area regulated pursuant to the other order as route disposition and to plants qualified as fully regulated plants under such other order on the basis of route disposition in its marketing area.

[47 FR 16612, Apr. 19, 1982]

§ 1007.8 Nonpool plant.

"Nonpool plant" means a plant (except a pool plant) which receives milk from dairy farmers or is a milk or filled milk manufacturing, processing, or bottling plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is a distributing plant and is not an other order plant, a producer-handler plant, or an exempt distributing plant.

(d) "Unregulated supply plant" means a nonpool plant that is a supply plant and is not an other order plant, a producer-handler plant, or an exempt distributing plant.

(e) "Exempt distributing plant" means a distributing plant operated by a governmental agency.

§ 1007.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) Any cooperative association with respect to producer milk which it causes to be diverted pursuant to § 1007.13 for the account of such cooperative association;

(c) A cooperative association with respect to milk of its producer-members which is delivered from the farm to the pool plant of another handler in a tank truck owned and operated by or under contract to such cooperative association. The milk for which a cooperative association is a handler pursuant to this paragraph shall be deemed to have been received at the location of the pool plant to which it was delivered;

(d) Any person in his capacity as the operator of a partially regulated distributing plant;

(e) A producer-handler; and

(f) Any person in his capacity as the operator of an other order plant that is either a distributing plant or a supply plant.

§ 1007.10 Producer-handler.

"Producer-handler" means any person who:

(a) Operates a dairy farm and a distributing plant;

(b) Receives no Class I milk from sources other than his own farm production and pool plants;

(c) Disposes of no other source milk as Class I milk;

(d) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled (excluding receipts from pool plants) and the operation of the processing and packaging business are his personal enterprise and risk.

[39 FR 15762, May 6, 1974, as amended at 45 FR 50702, July 31, 1980]

§ 1007.11 [Reserved]

§ 1007.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the inspection requirements of a duly constituted health authority, which milk is physically received at a pool plant or diverted pursuant to § 1007.13.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act or the operator of an exempt distributing plant;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1007.44(a)(8)(iii) and the corresponding step of § 1007.44(b); and

(3) Any person with respect to milk produced by him which is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

§ 1007.13 Producer milk.

"Producer milk" means the skim milk and butterfat contained in milk of a producer that is:

(a) Received at a pool plant directly from such producer or from a handler described in § 1007.9(c): *Provided,* That if the milk received at a pool plant from a handler described in § 1007.9(c) is purchased on a basis other than weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the volume by which the farm weights and butterfat as determined from the farm bulk tank samples of such milk exceed the weights and butterfat on which the pool plant's purchases are based shall be producer milk received by the handler pursuant to § 1007.9(c) at the location of the pool plant; or

(b) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant, subject to the following conditions:

(1) Such milk shall be deemed to have been received by the diverting handler at the plant to which diverted;

(2) Not less than 10 days' production of the producer whose milk is diverted is physically received at a pool plant;

(3) To the extent that it would result in nonpool plant status for the pool plant from which diverted, milk diverted for the account of a cooperative association from the pool plant of another handler shall not be producer milk;

(4) A cooperative association may divert for its account only the milk of member producers: *Provided*, That the total quantity of milk so diverted that exceeds 25 percent of the milk physically received from member producers at all pool plants during the month shall not be producer milk;

(5) The operator of a pool plant other than a cooperative association may divert for his account only the milk of producers who are not members of a cooperative association: *Provided*, That the total quantity of milk so diverted that exceeds 25 percent of the milk physically received at such plant during the month from producers who are not members of a cooperative association shall not be producer milk; and

(6) The diverting handler shall designate the dairy farmers whose milk is not producer milk pursuant to paragraph (b) (4) and (5) of this section. If the handler fails to make such designation, no milk diverted by him shall be producer milk.

§ 1007.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1007.40(b)(1) from any source other than producers, handlers described in § 1007.9 (c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1007.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1007.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1007.40(b)(1)) for which the handler fails to establish a disposition.

§ 1007.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form: Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in

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an equal volume of an unmodified product of the same nature and butterfat content.

[39 FR 15762, May 6, 1974, as amended at 40 FR 31942, July 30, 1975]

§ 1007.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1007.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1007.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines after application by the association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and be engaged in making collective sales of, or marketing milk or milk products for, its members.

§ 1007.19 Reload point.

"Reload point" means a location at which milk moved from a farm in a tank truck is transferred to another tank truck and commingled with other milk before entering a plant. A reload point shall not be considered a plant except that a reload operation on the premises of a plant shall be considered a part of the plant operation.

§ 1007.20 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1007.51a:

(a) *Butter price.* "Butter price" means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) *Cheddar cheese price.* "Cheddar cheese price" means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) *Nonfat dry milk price.* "Nonfat dry milk price" means the simple average, for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Division as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding workday until the day such prices were previously reported. A work-day is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price.* "Edible whey price" means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

[46 FR 43374, Aug. 28, 1981]

HANDLER REPORTS

§ 1007.30 Reports of receipts and utilization.

On or before the seventh day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1007.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1007.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1007.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1007.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1007.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

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(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1007.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1007.32 Other reports.

(a) Each handler described in § 1007.9 (a), (b) and (c) shall report to the market administrator on or before the seventh day after the end of each month of February through August the aggregate quantity of base milk received from producers during the month, and on or before the 20th day after the end of each month of February through August the pounds of base milk received from each producer during the month.

(b) In addition to the reports required pursuant to paragraph (a) of this section and §§ 1007.30 and 1007.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

[39 FR 15762, May 6, 1974, as amended at 45 FR 50702, July 31, 1980]

CLASSIFICATION OF MILK

§ 1007.40 Classes of utilization.

Except as provided in § 1007.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1007.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, low fat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, low fat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of

this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1007.15; and

(6) In shrinkage assigned pursuant to § 1007.41(a) to the receipts specified in § 1007.41(a)(2) and in shrinkage specified in § 1007.41 (b) and (c).

§ 1007.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1007.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraphs (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product.

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in § 1007.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1007.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraphs (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1007.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1007.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk and butterfat classified in each class be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1007.44(a)(12) and the corresponding step of § 1007.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1007.44(a)(7) or the corresponding step of § 1007.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1007.44(a) (11) or (12) or the corresponding steps of § 1007.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b)(1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1007.40.

(c) *Transfers to producer-handlers and transfers and diversions to exempt distributing plants.* Skim milk or butterfat in the following forms that is transferred from a pool plant to a producer-handler under this or any other Federal order or transferred or diverted from a pool plant to an exempt distributing plant shall be classified:

(1) As Class I milk, if so moved in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market ad-

ministrator, if transferred in the form of a bulk fluid cream product. For this purpose, the transferee's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to its receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant, an exempt distributing plant, or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraphs (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraphs (d)(2) (ii) through (viii) of this section:

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1007.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

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(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this paragraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this paragraph.

§ 1007.43 General classification rules.

In determining the classification of producer milk pursuant to § 1007.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1007.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1007.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1007.40, 1007.41, and 1007.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1007.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1007.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1007.9(a) for each of his pool plants separately and of each handler described in § 1007.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1007.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1007.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1007.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph (a)(5)

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or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1007.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1007.40(b)(1) that was not subtracted pursuant to paragraphs (a) (4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products; from a producer-handler as defined under this or any other Federal milk order and from an exempt distributing plant;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2), (7)(v), and (8)(i), of this section which are in excess of the pounds of skim milk determined pursuant to paragraphs (a)(8)(ii) (*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1007.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraphs (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraphs (a)(11) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2), (7)(v), and 8 (i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraphs (a) (7)(vi) and (8)(iii) of this section:

(i) Subject to the provisions of paragraphs (a)(12) (ii), (iii), and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1007.45(a); or (*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler):

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraphs (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraphs (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1007.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1007.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1007.44(a)(12) and the corresponding step of § 1007.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1007.44 on the basis of such report, and, thereafter any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month, report to each cooperative association, upon request by such association, the percentage of the milk caused to be delivered by the cooperative association for its members which was utilized in each class at each pool plant receiving such milk. For the purpose of this report, the milk so received shall be allocated to each class at each pool plant in the same ratio as all producer milk received at such plant during the month.

CLASS PRICES

§ 1007.50 Class prices.

Subject to the provisions of § 1007.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.30, and plus $0.20 for the months of September 1984 through February 1985.

(b) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price computed pursuant to § 1007.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, except that, for each month after the first month in which this paragraph is effective, the final Class II price shall be not less than the Class III price.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1007.51 and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1007.51a.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

[39 FR 15762, May 6, 1974, as amended at 46 FR 43374, Aug. 28, 1981; 49 FR 34800, Sept. 4, 1984]

§ 1007.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall not be less than $4.33.

§ 1007.51a Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1007.51 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

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(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1007.20 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following subparagraphs is of the total of the data represented in paragraphs (c)(1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

NOTE: The computation of the basic Class II formula price is affected by a determination document published on Sept. 6, 1984 at 49 FR 35078.

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

NOTE: The computation of the basic Class II formula price is affected by a determination document published on Sept. 6, 1984 at 49 FR 35078.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

[46 FR 43374, Aug. 28, 1981, as amended at 49 FR 35078, Sept. 6, 1984]

§ 1007.52 Plant location adjustments for handlers.

(a) The following zones are defined for the purpose of determining location adjustments:

(1) "Northern Zone" means all the territory in the following Georgia counties:

Banks, Bartow, Catoosa, Chattooga, Cherokee, Dade, Dawson, Elbert, Fannin, Floyd, Forsyth, Franklin, Habersham, Gilmer, Gordon, Hall, Hart, Jackson, Lumpkin, Madison, Murray, Pickens, Rabun, Stephens, Towns, Union, Walker, White, Whitfield.

(2) "Southern Zone" means all the territory in the State of Georgia that is not within the Northern Zone.

(b) The Class I price for producer milk at a plant in the Northern Zone shall be reduced 15 cents and at a plant that is outside Georgia, north of an east-west line extending from the city hall in Atlanta and more than 100 miles (by the shortest hard-surfaced highway distance as determined by the market administrator) from the nearer of the city halls in Atlanta and Augusta, Ga., shall be reduced 15 cents and an additional 1.5 cents for each 10 miles or fraction thereof in excess of 110 miles (by the shortest hard-surfaced highway distance as determined by the market administrator) that such plant is from the nearer of the city halls in Atlanta and Augusta: *Provided*, That the location adjustment pursuant to this paragraph applicable at a plant in Alabama or South Carolina shall not be more than 15 cents.

(c) For the purpose of calculating location adjustments, receipts of fluid milk products from pool plants shall be assigned any remainder of Class I milk at the transferee-plant that is in excess of the sum of producer milk receipts at such plant and that assigned as Class I to receipts from other order plants and unregulated supply plants. Such assignment shall be made first to receipts from plants at which no location adjustment is applicable pursuant to this section and then in sequence beginning with receipts from the plant with the lowest applicable location adjustment.

(d) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (b) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1007.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month and, for each month after the first month in which this section is effective, the final Class II price for the preceding month; and on or before the 15th day of each month the tentative Class II price for the following month.

[46 FR 43375, Aug. 28, 1981]

§ 1007.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICES

§ 1007.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1007.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1007.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1007.44(a)(14) and the corresponding step of § 1007.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1007.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1007.44(a)(9) and the corresponding step of § 1007.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1007.44(a)(7) (i)

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through (iv) and the corresponding step of § 1007.44(b), excluding receipts of bulk fluid cream products from another order plant.

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1007.44(a)(7) (v) and (vi) and the corresponding step of § 1007.44(b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1007.44(a)(11) and the corresponding step of § 1007.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

(g) With respect to milk marketed on and after the effective date hereof, through February 1985, subtract the amount obtained by multiplying the pounds of bulk fluid milk products that were transferred to the handler's pool plant from another order plant and allocated to Class I milk, buy a rate equal to 3.3 cents per hundredweight for each 10 miles or fraction thereof, less any difference (positive only) between the Class I differential applicable at the receiving plant less the Class I differential applicable at the shipping plant.

[39 FR 15762, May 6, 1974, as amended at 45 FR 50702, July 31, 1980; 49 FR 34801, Sept. 4, 1984]

§ 1007.61 Computation of uniform price (including weighted average price and uniform prices for base and excess milk).

(a) The market administrator shall compute the weighted average price for each month and the uniform price for each month of September through January per hundredweight for milk of 3.5 percent butterfat content as follows:

(1) Combine into one total the values computed pursuant to § 1007.60 for all handlers who filed the reports prescribed in § 1007.30 for the month and who made the payments pursuant to § 1007.71 for the preceding month;

(2) Add one-half the unobligated balance in the producer-settlement fund;

(3) Add an amount equal to the total value of the minus location adjustments computed pursuant to § 1007.75;

(4) Divide the resulting amount by the sum of the following for all handlers included in these computations;

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1007.60(f); and

(5) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The resulting figure, rounded to the nearest cent shall be the weighted average price for each month and the uniform price for the months of September through January.

(b) For each month of February through August the market administrator shall compute the uniform prices per hundredweight for base milk and for excess milk, each of 3.5 percent butterfat content, as follows:

(1) Compute the total value of excess milk for all handlers included in the computations pursuant to paragraph (a)(1) of this section as follows:

(i) Multiply the hundredweight quantity of excess milk that does not exceed the total quantity of such handlers' producer milk assigned to Class III milk by the Class III price;

(ii) Multiply the remaining hundredweight quantity of excess milk that does not exceed the total quantity of such handlers' producer milk assigned to Class II milk by the Class II price;

(iii) Multiply the remaining hundredweight quantity of excess milk by the Class I price; and

(iv) Add together the resulting amounts:

(2) Divide the total value of excess milk obtained in paragraph (b)(1) of this section by the total hundredweight of such milk and adjust to the

nearest cent. The resulting figure shall be the uniform price for excess milk;

(3) From the amount resulting from the computations pursuant to paragraphs (a) (1) through (3) of this section, subtract an amount computed by multiplying the hundredweight of milk specified in paragraph (a)(4)(ii) of this section by the weighted average price;

(4) Subtract the total value of excess milk determined by multiplying the uniform price obtained in paragraph (b)(2) of this section times the hundredweight of excess milk from the amount computed pursuant to paragraph (b)(3) of this section;

(5) Divide the amount calculated pursuant to paragraph (b)(4) of this section by the total hundredweight of base milk included in these computations; and

(6) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (b)(5) of this section. The resulting figure, rounded to the nearest cent, shall be the uniform price for base milk.

[45 FR 50702, July 31, 1980]

§ 1007.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 11th day after the end of each month the applicable uniform price(s) pursuant to § 1007.61 for such month.

[45 FR 50703, July 31, 1980]

Payments for Milk

§ 1007.70 Producer-settlement fund.

The market administrator shall maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments into such fund pursuant to §§ 1007.71 and 1007.76 and out of which he shall make all payments from such fund pursuant to § 1007.72: *Provided*, That the market administrator shall offset the payment due to a handler against payments due from such handler.

§ 1007.71 Payments to the producer-settlement fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1007.60.

(2) The sum of:

(i) The value at the uniform prices pursuant to § 1007.61, as adjusted pursuant to § 1007.75, of such handler's receipts of producer milk; and

(ii) The value at the weighted average price pursuant to § 1007.61(a) applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1007.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

[39 FR 15762, May 6, 1974, as amended at 45 FR 50703, July 31, 1980]

§ 1007.72 Payments from the producer-settlement fund.

On or before the 13th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1007.71(a)(2) exceeds the amount computed pursuant to § 1007.71(a)(1). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the funds are available.

§ 1007.73 Payments to producers and to cooperative associations.

(a) Except as provided in paragraph (b) of this section, each handler shall make payment for producer milk as follows:

(1) On or before the last day of the month to each producer who had not discontinued shipping milk to such handler before the 15th day of the month not less than the Class III price for the preceding month per hundredweight of milk received during the first 15 days of the month less proper deductions authorized in writing by such producer;

(2) On or before the 15th day of each month at not less than the applicable uniform price(s) for the quantities of milk or base milk and excess milk received adjusted by the butterfat differential computed pursuant to § 1007.74, and by the location adjustment computed pursuant to § 1007.75, subject to the following:

(i) Less payments made pursuant to paragraph (a)(1) of this section;

(ii) Less proper deductions authorized in writing by such producer;

(iii) Less deductions for marketing services made pursuant to § 1007.86; and

(iv) If by such date such handler has not received full payment from the market administrator pursuant to § 1007.72 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after receipt of the balance due from the market administrator.

(b) In the case of a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and which has so requested any handler in writing, together with a written promise of such association to reimburse the handler the amount of any actual loss incurred by him because of any improper claim on the part of the association, such handler on or before the day prior to the date on which payments are due individual producers shall pay the cooperative association for milk received during the month from the producer-members of such association as determined by the market administrator an amount not less than the total due such producer-members pursuant to paragraph (a) of this section, subject to the following:

(1) Payment pursuant to this paragraph shall be made for milk received from any producer beginning on the first day of the month following receipt from the cooperative association of its certification that such producer is a member, and continuing through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the cooperative association; and

(2) Copies of the written request of the cooperative association to receive payments on behalf of its members, together with its promise to reimburse and its certified list of members, shall be submitted simultaneously both to the handler and to the market administrator and shall be subject to verification by the market administrator at his discretion through audit of the records of the cooperative association. Exceptions, if any, to the accuracy of such certification claimed by any producer or by a handler shall be made by written notice to the market administrator and shall be subject to his determination.

[39 FR 15762, May 6, 1974, as amended at 45 FR 50703, July 31, 1980]

§ 1007.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform prices for base and excess milk shall be increased, or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1007.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price and the uniform price for base milk shall be reduced according to the location of the pool plant at the rates set forth in § 1007.52(b); and

(b) The weighted average price applicable to other source milk shall be adjusted at the rates set forth in § 1007.52(b) applicable at the location of the nonpool plant from which the milk was received, except that the weighted average price shall not be less than the Class III price.

[39 FR 15762, May 6, 1974, as amended at 45 FR 50703, July 31, 1980]

§ 1007.76 Payments by handler operating a paritally regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1007.30(b) and 1007.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the weighted average price pursuant to § 1007.61(a), both prices to be applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1007.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1007.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1007.60 for such handler shall include, in lieu of the value of other source milk specified in § 1007.60(f) less the value of such other source milk specified in § 1007.71(a)(2)(ii), a value of milk determined pursuant to § 1007.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1007.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1007.30 (b) and 1007.31(b) similar reports for each such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(*c*) The value of milk determined pursuant to § 1007.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1007.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1007.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plan if paragraph (b)(1)(iii) of this section applies.

[39 FR 15762, May 6, 1974, as amended at 45 FR 50703, July 31, 1980]

§ 1007.77 Adjustment of accounts.

When verification by the market administrator of reports or payments of a handler discloses errors resulting in moneys due the market administrator from such handler, such handler from the market administrator, or a producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made not later than the date for making payment next following such disclosure.

§ 1007.78 Charges on overdue accounts.

The unpaid obligation of a handler pursuant to §§ 1007.71, 1007.77, 1007.85, and 1007.86 shall be increased one-half of 1 percent for each month or portion thereof that such obligation is overdue.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1007.85 Assessment for order administration.

As his pro rata share of the expense of administration of this part, each handler shall pay to the market administrator on or before the 15th day after the end of the month 4 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to:

(a) Producer milk (including such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1007.44(a) (7) and (11) and the corresponding steps of § 1007.44(b), except such other source milk that is excluded from the computations pursuant to § 1007.60 (d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1007.76(a)(2).

§ 1007.86 Deduction for marketing services.

(a) Except as provided in paragraph (b) of this section, each handler in making payments for producer milk received during the month shall deduct 6 cents per hundredweight or such lesser amount as the Secretary may prescribe (except on such handler's own farm production) and shall pay such deductions to the market administrator not later than the 15th day after the end of the month. Such money shall be used by the market administrator to verify or establish weights, samples and tests of producer milk and to provide producers with market information. Such services shall be performed by the market administrator or by an agent engaged by and responsible to him.

(b) If the Secretary determines that a cooperative association is performing for its members the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions as are authorized by such members and, on or before the 15th day after the end of each month, pay over such deductions to the association rendering such services.

BASE-EXCESS PLAN

SOURCE: Sections 1007.90 through 1007.94 appear at 45 FR 50703, July 31, 1980, unless otherwise noted.

§ 1007.90 Base milk.

"Base milk" means the producer milk of a producer in each month of February through August that is not in excess of the producer's base multiplied by the number of days in the month, except that for the months of February 1985 through August 1985 base milk shall be determined by the producer's base multiplied by the number of days in the month times the percentage of the producer's production pooled pursuant to § 1007.13.

[49 FR 34801, Sept. 4, 1984]

§ 1007.91 Excess milk.

"Excess milk" means the producer milk of a producer in each month of February through August in excess of the producer's base milk for the month, and shall include all the producer milk in such months of a producer who has no base.

§ 1007.92 Computation of base for each producer.

(a) Subject to § 1007.93, the base for each producer shall be an amount obtained by dividing the total pounds of producer milk delivered by such producer during the immediately preceding months of September through January by the number of days' production represented by such producer milk or by 145, whichever is more. If a producer operated more than one farm at the same time, a separate computation of base shall be made for each such farm. For producer bases to be calculated on or before March 1, 1985, and subject to § 1007.93, the base to be calculated for each producer shall be an amount obtained by dividing the total pounds of his producer milk (as defined under the respective orders) received from the producer by all handlers fully regulated under the terms of the respective orders regulating the handling of milk in the Georgia; Tennessee Valley; Louisville-Lexington-Evansville; Alabama-West Florida; Memphis, Tennessee; Nashville, Tennessee; Fort Smith, Arkansas; and Central Arkansas marketing areas (Parts 1007, 1011, 1046, 1093, 1097, 1098, 1102, and 1108, respectively, of this chapter) during the immediately preceding months of September 1984 through January 1985 by the number of days' production represented by such producer milk or by 145, whichever is more.

(b) Except as provided in paragraph (c) of this section, any producer who, during the preceding months of September through January, delivered milk to a nonpool plant that became a pool plant after the beginning of such period shall be assigned a base in the same manner as if the dairy farmer had been a producer during such entire period, calculated from the producer's deliveries during such September-January period to such plant. A base thus assigned shall not be transferable. For bases calculated from the September 1984-January 1985 base-forming period, and except as provided in paragraph (c) of this section, the base for a producer whose milk was delivered to a plant that did not become a pool plant under any of the orders specified in paragraph (a) of this section until after the beginning of the base-forming period shall be calculated as if the plant were a pool plant under such orders for the entire base-forming period. A base thus assigned shall not be transferable.

(c) Any producer who delivered milk to a newly constructed plant that first received milk approved by a duly constituted health authority for fluid consumption not more than three months prior to the date it became a pool plant pursuant to § 1007.7(a) after the beginning of the base-forming period, and whose first delivery of such approved milk to the new plant was made not more than four months after the date of such plant's first receipt of such milk, shall be assigned a base calculated from such producer's verifiable deliveries of approved milk to all plants during such entire base-forming period. A base thus assigned shall not be transferable. This paragraph shall not apply to a newly constructed plant that is a replacement plant (as determined by the market administrator) for a pool plant pursuant to § 1007.7(a).

[45 FR 50703, July 31, 1980, as amended at 49 FR 34801, Sept. 4, 1984]

§ 1007.93 Base rules.

(a) Except as provided in § 1007.92 (b) and (c), a base may be transferred only when a producer discontinues milk production and only in amounts of not less than 100-pound increments. A base transfer shall be effective on the first day of the month following the date on which an application for such transfer is received by the market administrator. Base may be transferred only to a person who is or will be a producer by the end of the month that the transfer is to be effective. In the case of intrafamily transfers, including transfers to the estate or from an estate to a member of the immediate family, such transfers may be effective on any day of the month if application for such transfer is filed with the market administrator within five days thereafter. An application for a base transfer shall be on a form approved by the market administrator and signed by the baseholder or the baseholder's heirs and the person or persons to whom the base is to be transferred. If a base is held jointly, the application must be signed by all joint holders or their heirs.

(b) The base established by a partnership may be divided between the partners on any basis agreed to in writing by them if written notification of the agreed-upon division of base signed by each partner is received by the market administrator prior to the first day of the month in which such division is to be effective.

(c) Two or more producers in a partnership may combine their separately established bases by giving notice to the market administrator prior to the first day of the month in which such combination of bases is to be effective.

§ 1007.94 Announcement of established bases.

On or before March 1 of each year, the market administrator shall calculate a base for each person who was a producer during any of the immediately preceding months of September through January and shall notify each producer and the handler receiving milk from such dairy farmer of the base established by the producer. If requested by a cooperative association, the market administrator shall notify the cooperative association of each producer-member's base.

PART 1011—MILK IN THE TENNESSEE VALLEY MARKETING AREA

Subpart—Order Regulating Handling

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AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended, 7 U.S.C. 601-674.

SOURCE: 41 FR 36796, Sept. 1, 1976, unless otherwise noted.

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Subpart—Order Regulating Handling

GENERAL PROVISIONS

§ 1011.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1011.2 Tennessee Valley marketing area.

The "Tennessee Valley marketing area", hereinafter called the marketing area, means all the territory within the boundaries of the following counties, including all waterfront facilities connected therewith and all territory occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within the listed counties:

(a) In Tennessee, the counties of:

Anderson, Blount, Bradley, Campbell, Carter, Claiborne, Cocke, Cumberland, Grainger, Greene, Hamblen, Hamilton, Hancock, Hawkins, Jefferson, Johnson, Knox, Loudon, Marion, McMinn, Meigs, Monroe, Morgan, Polk, Rhea, Roane, Scott, Sequatchie, Sevier, Sullivan, Unicol, Union, Washington.

(b) In Kentucky, the counties of:

Bell, Breathitt, Harlan, Knott, Knox, Leslie, Letcher, Perry, Whitley.

(c) In Virginia: (1) The counties of:

Buchanan, Dickenson, Lee, Russell, Scott, Tazewell, Washington, Wise.

(2) The cities of:

Bristol, Norton.

(d) In Georgia, the counties of:

Catoosa, Chattooga, Dade, Fannin, Murray, Walker, Whitfield.

(e) In West Virginia, the counties of:

McDowell, Mercer.

§ 1011.3 Route disposition.

"Route disposition" means a delivery to a retail or wholesale outlet (except to a plant) either direct or through any distribution facility (including disposition from a plant store, vendor or vending machine) of a fluid milk product classified as Class I milk.

§ 1011.4 Plant.

"Plant" means the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products (including filled milk) are received, processed, or packaged. Separate facilities without stationary storage tanks which are used only as a reload point for transferring bulk milk from one tank truck to another or separate facilities used only as a distribution point for storing packaged fluid milk products in transit for route disposition shall not be a plant under this definition.

§§ 1011.5—1011.6 [Reserved]

§ 1011.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) A plant that is approved by a duly constituted regulatory agency for the processing or packaging of Grade A milk and from which during the month:

(1) Route disposition, except filled milk, in the marketing area is not less than 10 percent of the total quantity of Grade A fluid milk products, except filled milk, physically received at such plant or diverted therefrom pursuant to § 1011.13; and

(2) The total quantity of fluid milk products, except filled milk, disposed of in Class I is not less than 60 percent in each of the months of August through November and January and February, and 40 percent in each of the other months, of the total quantity of fluid milk products, except filled milk, physically received at such plant or diverted therefrom pursuant to § 1011.13. The applicable percentage in this subparagraph may be increased or decreased up to 10 percentage points by the Director of the Dairy Division if the Director finds such revision is necessary to effect a similar adjustment pursuant to § 1011.13(e)(3). Before making such a finding, the Director shall investigate the need for revision either at the Director's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the Director shall issue a notice stat-

ing that the revision is being considered and invite data, views, and arguments.

(b) A plant, other than a plant described in paragraph (a) of this section, from which fluid milk products, except filled milk, are shipped to pool plants pursuant to paragraph (a) of this section. Such shipments must equal not less than 60 percent in each of the months of August through November and January and February, and 40 percent in each of the other months, of the total quantity of milk approved by a duly constituted regulatory agency for fluid consumption that is received during the month at such plant from dairy farmers (including producer milk diverted from the plant pursuant to § 1011.13 but excluding milk diverted to such plant) and handlers described in § 1011.9 (c) and (d). The operator of such a plant may include milk diverted from such plant to plants described in paragraph (a) of this section as qualifying shipments in meeting up to one-half of the required shipments. The applicable shipping percentage of this paragraph may be increased or decreased up to 10 percentage points by the Director of the Dairy Division if the Director finds such revision is necessary to obtain needed shipments or to prevent uneconomic shipments. Before making such a finding, the Director shall investigate the need for revision either at the Director's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the Director shall issue a notice stating that the revision is being considered and invite data, views, and arguments.

(c) A plant located in the marketing area that is operated by a cooperative association if pool plant status under this paragraph is requested for such plant by the cooperative association and during the month 60 percent or more of the producer milk of members of such cooperative association, excluding such milk that is received at or diverted from pool plants described in paragraph (b) of this section but including milk delivered by such cooperative as a handler described in § 1011.9(c), is delivered directly from their farms to pool plants described in paragraph (a) of this section or is transferred to such plants as a bulk fluid milk product from the plant of the cooperative association, subject to the following conditions:

(1) The plant does not qualify as a pool plant under paragraph (a) or (b) of this section or under the provisions of another Federal order applicable to a distributing plant or a supply plant; and

(2) The plant is approved by a duly constituted regulatory agency to handle milk for fluid consumption.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A governmental agency plant;

(3) A plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of an other Federal order and from which there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area than in this marketing area; and

(4) A plant qualified pursuant to paragraph (b) of this section which also meets the pooling requirements for the month under an other Federal order.

[47 FR 19668, May 7, 1982]

§ 1011.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is not a producer-handler plant, a governmental agency plant or an other order plant and from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant that is not a producer-handler plant, a governmental agency plant or an other order plant and from which fluid milk products are shipped to a pool plant.

(e) "Governmental agency plant" means a plant operated by a governmental agency from which fluid milk products are distributed in the marketing area. Such plant shall be exempt from all provisions of this part.

§ 1011.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) A cooperative association with respect to milk of producers diverted to nonpool plants for the account of such association pursuant to § 1011.13, excluding the milk of producers diverted by the association as a handler pursuant to paragraph (a) of this section;

(c) Any cooperative association with respect to milk, excluding the milk of producers diverted to pool plants by the association as a handler pursuant to paragraph (a) of this section, that it receives for its account from the farm of a producer for delivery to a pool plant of another handler, in a tank truck owned and operated by, or under the control of, such cooperative association, unless both the cooperative association and the operator of the pool plant notify the market administrator prior to the time that such milk is delivered to the pool plant that the plant operator will be the handler of such milk and will purchase such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples. Milk for which the cooperative association is the handler pursuant to this paragraph shall be deemed to have been received by the cooperative association at the location of the pool plant to which such milk is delivered;

(d) Any person, except a cooperative association, with respect to milk that it receives for its account from the farm of a producer in a tank truck owned and operated by, or under the control of, such person and which is delivered during the month for the account of such person to the pool plant of another handler or diverted pursuant to § 1011.13, subject to the following conditions:

(1) Such person (who, if qualified pursuant to this paragraph, shall be known as a "proprietary bulk tank handler") must operate a plant located in an area that includes the marketing area plus the area within 100 miles of the marketing area boundary at which milk is processed only into Class II or Class III products; and

(2) Prior to operating as a handler pursuant to this paragraph, such person must submit to the market administrator a statement signed by the applicant and the operator of the pool plant to which the milk will be delivered specifying that the applicant will be the responsible handler for the milk;

(e) Any person who operates a partially regulated distributing plant;

(f) A producer-handler; and

(g) Any person who operates an other order plant described in § 1011.7(d).

[41 FR 36796, Sept. 1, 1976, as amended at 44 FR 53719, Sept. 17, 1979; 47 FR 19669, May 7, 1982]

§ 1011.10 Producer-handler.

"Producer-handler" means any person:

(a) Who operates a dairy farm and a processing plant from which there is route disposition in the marketing area;

(b) Who receives no fluid milk products from sources other than his own farm production, pool plants and other order plants;

(c) Whose receipts of fluid milk products from pool plants and other order plants do not exceed a daily average of 1,500 pounds during the month;

(d) Who disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products received from his own farm production or pool plants; and

(e) Who provides proof satisfactory to the market administrator that the care and management of the dairy farm and other resources necessary for his own farm production of milk and the management and operation of the processing plant are the personal enterprise and risk of such person.

§ 1011.11 [Reserved]

§ 1011.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption, which milk is:

(1) Received at a pool plant directly from such person;

(2) Received by a handler described in § 1011.9(c) or (d); or

(3) Diverted from a pool plant in accordance with § 1011.13.

(b) "Producer" shall not include:

(1) A producer-handler as described in any order (including this part) issued pursuant to the Act;

(2) A governmental agency operating a plant exempt pursuant to § 1011.8(e);

(3) Any person with respect to milk produced by him that is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1011.44(a)(8)(iii) and the corresponding step of § 1011.44(b); and

(4) Any person with respect to milk produced by him that is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

[41 FR 36796, Sept. 1, 1976, as amended at 47 FR 19669, May 7, 1982]

§ 1011.13 Producer milk.

"Producer milk" means the skim milk and butterfat contained in milk of a producer that is:

(a) Received at a pool plant directly from such producer by the operator of the plant, excluding such milk that is diverted from another pool plant;

(b) Received by a handler described in § 1011.9(c);

(c) Received by a handler described in § 1011.9(d), excluding milk diverted pursuant to paragraph (e) of this section;

(d) Diverted from a pool plant for the account of the handler operating such plant to another pool plant;

(e) Diverted from a pool plant to a nonpool plant (other than a producer-handler plant) for the account of the handler described in § 1011.9(a), (b) or (d) subject to the following conditions:

(1) A producer's milk shall be eligible for diversion to a nonpool plant during any month in which such producer's milk is physically received at a pool plant as follows:

(i) In any month of August through February, six days' production; and

(ii) In any month of March through July, two days' production.

(2) During each of the months of August through November and January and February, the total quantity of milk diverted by a cooperative association shall not exceed one-fourth of the producer milk that such cooperative caused that month to be delivered to or diverted from pool plants;

(3) The total quantity of milk diverted by a proprietary bulk tank handler described in § 1011.9(d) shall not exceed 40 percent of the producer milk that such handler caused to be delivered to or diverted from pool plants in each month of August through November and January and February, and 60 percent in each of the other months. The applicable diversion percentage of this subparagraph may be increased or decreased up to 10 percentage points by the Director of the Dairy Division if the Director finds such revision is necessary to obtain needed shipments or to prevent uneconomic shipments. Before making such a finding, the Director shall investigate the need for revision either at the Director's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the Director shall issue a notice stating that the revision is being considered and invite data, views, and arguments;

(4) A handler described in § 1011.9(a) that is not a cooperative association may divert for its account any milk that is not under the control of a cooperative association or a proprietary bulk tank handler that diverts milk during the month pursuant to paragraph (e)(2) or (3) of this section. The

total quantity of milk so diverted shall not exceed one-fourth of the milk that is physically received at or diverted from pool plants as producer milk of such handler in each month of August through November and January and February;

(5) Any milk diverted in excess of the limits prescribed in paragraph (e)(2), (3) or (4) of this section shall not be producer milk. The diverting handler shall designate the dairy farmer deliveries that shall not be producer milk. If the handler fails to make such designation, no milk diverted by such handler pursuant to this paragraph shall be producer milk;

(6) To the extent that it would result in nonpool status for the pool plant from which diverted, milk diverted for the account of a cooperative association or a proprietary bulk tank handler from the pool plant of another handler shall not be producer milk;

(7) The cooperative association or proprietary bulk tank handler shall designate the dairy farmer deliveries that are not producer milk pursuant to paragraph (e)(6) of this section. If the diverting handler fails to make such designation, no milk diverted by such handler shall be producer milk; and

(f) Milk diverted pursuant to paragraph (d) or (e) of this section shall be priced at the location of the plant to which diverted.

[47 FR 19669, May 7, 1982; 47 FR 20743, May 14, 1982]

§ 1011.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1011.40(b)(1) from any source other than producers, handlers described in § 1011.9(c) and (d) or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1011.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1011.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1011.40(b)(1)) for which the handler fails to establish a disposition.

[41 FR 36796, Sept. 1, 1976, as amended at 47 FR 19670, May 7, 1982]

§ 1011.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form: Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1011.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1011.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1011.18 Cooperative association.

"Cooperative association" means any cooperative association of producers which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have and to be exercising full authority in the sale of milk of its members.

§ 1011.19 [Reserved]

§ 1011.20 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1011.51a:

(a) *Butter price.* "Butter price" means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) *Cheddar cheese price.* "Cheddar cheese price" means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) *Nonfat dry milk price.* "Nonfat dry milk price" means the simple average, for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Division as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding work-day until the day such prices were previously reported. A work-day is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price.* "Edible whey price" means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

[46 FR 43375, Aug. 28, 1981]

HANDLER REPORTS

§ 1011.30 Reports of receipts and utilization.

On or before the sixth day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1011.9(c);

(3) Receipts of milk from handlers described in § 1011.9(d);

(4) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(5) Receipts of other source milk;

(6) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1011.40(b)(1); and

(7) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1011.9(b), (c), and (d) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

[41 FR 36796, Sept. 1, 1976, as amended at 47 FR 19670, May 7, 1982]

§ 1011.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1011.9 (a), (b), (c), and (d) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1011.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

[41 FR 36796, Sept. 1, 1976, as amended at 47 FR 19670, May 7, 1982]

§ 1011.32 Other reports.

(a) Each handler described in § 1011.9 (a), (b), (c), and (d) shall report to the market administrator on or before the 6th day after the end of each month of March through June the aggregate quantity of base milk received from producers during the month, and on or before the 20th day after the end of each month of March through June the pounds of base milk received from each producer during the month.

(b) In addition to the reports required pursuant to paragraph (a) of this section and §§ 1011.30 and 1011.31, each handler shall report such other information as the market administrator deems necessary to verify or establish each handler's obligation under the order.

[42 FR 40889, Aug. 12, 1977, as amended at 47 FR 19670, May 7, 1982; 47 FR 20743, May 14, 1982]

CLASSIFICATION OF MILK

§ 1011.40 Classes of utilization.

Except as provided in § 1011.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1011.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1011.15; and

(6) In shrinkage assigned pursuant to § 1011.41(a) to the receipts specified in § 1011.41(a)(2) and in shrinkage specified in § 1011.41 (b) and (c).

§ 1011.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1011.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraphs (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraphs (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1011.9(c) and (d) and in milk diverted to such plant from another pool plant, except that in either case, if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph (b)(2) shall be two percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph (b)(3) shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraphs (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1011.(9)(b) or (c) or a proprietary bulk tank handler is the handler pursuant to § 1011.9(d), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association or the proprietary bulk tank handler shall be zero.

[41 FR 36796, Sept. 1, 1976, as amended at 44 FR 53719, Sept. 17, 1979; 47 FR 19670, May 7, 1982]

§ 1011.42 Classification of transfers and diversions.

(a) *Transfers and diversions (including deliveries by a handler described in § 1011.9(d)) to pool plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant or from a handler described in § 1011.9(d) to a pool plant shall be classified as Class I milk unless both handlers request the same classification in another class. In either case, the classification of such transfers or diversions shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant or divertee-plant after the computations pur-

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suant to § 1011.44(a)(12) and the corresponding step of § 1011.44(b);

(2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to § 1011.44(a)(7) or the corresponding step of § 1011.44(b), the skim milk or butterfat so transferred or diverted shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler or divertor-handler received during the month other source milk to be allocated pursuant to § 1011.44(a) (11) or (12) or the corresponding steps of § 1011.44(b), the skim milk or butterfat so transferred or diverted, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant or divertee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrations, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1011.40.

(c) *Transfers to producer-handlers and transfers and diversions to governmental agency plants.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order or transferred or diverted to a governmental agency plant shall be classified:

(1) As Class I milk, if so moved in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the transferee's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to its receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant, a producer-handler plant, or a governmental agency plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraphs (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraphs (d)(2) (ii) through (viii) of this section:

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1011.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, and then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

(e) *Transfers by a handler described in § 1011.9(c) to pool plants.* Skim milk and butterfat transferred in the form of bulk milk by a handler described in § 1011.9(c) to another handler's pool plant shall be classified pursuant to § 1011.44 pro rata with producer milk received at the transferee-handler's plant.

[41 FR 36796, Sept. 1, 1976, as amended at 44 FR 53719, Sept. 17, 1979; 47 FR 19670, May 7, 1982]

§ 1011.43 General classification rules.

In determining the classification of producer milk pursuant to § 1011.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1011.30 and shall compute separately for each pool plant, for each proprietary bulk tank handler pursuant to § 1011.9(d), and for each cooperative association with respect to milk for which it is the handler pursuant to § 1011.9(b) or (c) that was not received at a pool plant, the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1011.40, 1011.41, and 1011.42. The combined pounds of skim milk and butterfat so determined in each class for a handler described in § 1011.9(b), (c) or (d) shall be such handler's classification of producer milk;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk of a handler pursuant to § 1011.9(b), (c), or (d) shall be determined separately from the operations of any pool plant operated by such handler.

[41 FR 36796, Sept. 1, 1976, as amended at 47 FR 19670, May 7, 1982]

§ 1011.44 Classification of producer milk.

For each month the market administrator shall determine for each handler described in § 1011.9(a) for each of his pool plants separately the classification of producer milk and milk received from a handler described in § 1011.9(c), by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1011.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1011.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1011.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This paragraph shall apply

only if the pool plant was subject to the provisions of this paragraph (a)(5) or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1011.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1011.40(b)(1) that was not subtracted pursuant to paragraphs (a) (4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order and from a governmental agency;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraphs (a)(8)(ii) (*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III, and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, milk from a handler described in § 1011.9 (c) or (d), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and product specified in § 1011.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraphs (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraphs (a)(11) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2), (7)(v), and (8)(i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this paragraph (a)(11)(i) exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and the Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraphs (a)(7)(vi) and (8)(iii) of this section:

(i) Subject to the provisions of paragraphs (a)(12) (ii), (iii), and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1011.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraphs (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraphs (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available.

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from an other pool plant or a handler described in § 1011.9(d) according to the classification of such products pursuant to § 1011.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk and milk received from a handler described in § 1011.9(c), subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk and milk received from a handler described in § 1011.9(c) in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

[41 FR 36796, Sept. 1, 1976, as amended at 47 FR 19670, May 7, 1982]

§ 1011.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1011.44(a)(12) and the corresponding step of § 1011.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1011.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month, report to each cooperative association which so requests, the percentage of producer milk delivered by members of such association which was used in each class by each handler receiving such milk. For the purpose of this report the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handler.

CLASS PRICES

§ 1011.50 Class prices.

Subject to the provisions of § 1011.52, the class prices for the month per hundredweight of milk shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.10, and plus $0.20 for the months of September 1984 through February 1985.

(b) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price computed pursuant to § 1011.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, except that, for each month after the first month in which this paragraph is effective, the final Class II price shall be not less than the Class III price.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1011.51 and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1011.51a.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

[41 FR 36796, Sept. 1, 1976, as amended at 46 FR 43375, Aug. 28, 1981; 49 FR 34801, Sept. 4, 1984]

§ 1011.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1011.51a Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1011.51 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1011.20 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (c) (1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

NOTE: The computation of the basic Class II formula price is affected by a determination document published on Sept. 6, 1984 at 49 FR 35078.

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

NOTE: The computation of the basic Class II formula price is affected by a determination document published on Sept. 6, 1984 at 49 FR 35078.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

[46 FR 43376, Aug. 28, 1981, as amended at 49 FR 35078, Sept. 6, 1984]

§ 1011.52 Plant location adjustments for handlers.

(a) For milk received from producers or from a handler described in § 1011.9 (c) or (d) at a plant that is outside the marketing area and more than 90 miles by the shortest hard-surfaced highway distance as determined by the market administrator from the city halls in Bristol, Chattanooga, and Knoxville, Tennessee, and which is classified as Class I milk subject to the limitations pursuant to paragraph (b) of this section, the Class I price shall be reduced 1.5 cents for each 10 miles or fraction thereof that such plant is from the nearest of the city halls in Bristol, Chattanooga, and Knoxville, except that no adjustment shall be made under this paragraph at any plant that is located east of the Mississippi River and south of the southern boundary of Tennessee or the northern boundary of South Carolina.

(b) For fluid milk products transferred in bulk form between pool plants, a location adjustment credit for the transferor-plant shall be determined by the market administrator for skim milk and butterfat, respectively, as follows:

(1) Subtract from the pounds of skim milk remaining in Class I at the transferee-plant after the computations pursuant to § 1011.44(a)(12) an amount equal to:

(i) The pounds of skim milk in receipts of milk at the transferee-plant from producers and handlers described in § 1011.9(c) and 9(d); and

(ii) The pounds of skim milk in receipts of packaged fluid milk products from other pool plants;

(2) Assign any remaining pounds of skim milk in Class I at the transferee-plant to the skim milk in receipts of bulk fluid milk products from other pool plants, first to the transferor-plant at which no location adjustment applies and then to other plants in sequence beginning with the plant at which the least location adjustment applies;

(3) Compute the total amount of location adjustment credits to be assigned to transferor-plants by multiplying the hundredweight of skim milk assigned pursuant to paragraph (b)(2) of this section to each transferor-plant by the applicable location adjustment rate for each such plant, and add the resulting amounts;

(4) Assign the total amount of location adjustment credits computed pursuant to paragraph (b)(3) of this section to those transferor-plants that transferred fluid milk products containing skim milk classified as Class I milk pursuant to § 1011.42(a), in sequence beginning with the plant at which the least location adjustment applies. Subject to the availability of such credits, the credit assigned to each plant shall be equal to the hundredweight of such Class I skim milk multiplied by the applicable location adjustment rate for such plant. If the aggregate of this computation for all plants having the same location adjustment rate exceeds the credits that are available to those plants, such credits shall be prorated to the volume of skim milk in Class I transfers from such plants; and

(5) Location adjustment credit for butterfat shall be determined in accordance with the procedure outlined for skim milk in paragraphs (b) (1) through (4) of this section.

(c) The Class I price applicable to other source milk shall be adjusted by the amounts set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

[41 FR 36796, Sept. 1, 1976, as amended at 47 FR 19671, May 7, 1982]

§ 1011.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month and, for each month after the first month in which this section is effective, the final Class II price for the preceding month; and on or before the 15th day of each month the tentative Class II price for the following month.

[46 FR 43376, Aug. 28, 1981]

§ 1011.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICE

§ 1011.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk for each handler described in § 1011.9(a) with respect to each of its pool plants, for each handler described in § 1011.9 (b) and (c) with respect to milk that was not received at a pool plant, and for each handler described in § 1011.9(d) as follows:

(a) Multiply the pounds of producer milk and milk received from a handler described in § 1011.9(c) that were classified in each class pursuant to §§ 1011.43(a) and 1011.44(c) by the applicable class prices, and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1011.44(a)(14) and the corresponding step of § 1011.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1011.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1011.44(a)(9) and the corresponding step of § 1011.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1011.44(a)(7) (i) through (iv) and the corresponding step of § 1011.44(b), excluding receipts of bulk fluid cream products from another order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1011.44(a)(7) (v) and (vi) and the corresponding step of § 1011.44(b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1011.44(a)(11) and the corresponding step of § 1011.44(b) excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

(g) With respect to milk marketed on and after the effective date hereof, through February 1985, subtract the amount obtained by multiplying the pounds of bulk fluid milk products that were transferred to the handler's pool plant from another order plant and allocated to Class I milk, by a rate equal to 3.3 cents per hundredweight for each 10 miles or fraction thereof, less any difference (positive only) between the Class I differential applicable at the receiving plant less the Class I differential applicable at the shipping plant.

[41 FR 36796, Sept. 1, 1976, as amended at 47 FR 19671, May 7, 1982; 49 FR 34801, Sept. 4, 1984]

§ 1011.61 Computation of uniform price (including weighted average price and uniform prices for base and excess milk).

(a) The market administrator shall compute the weighted average price for each month and the uniform price for each month of July through February per hundredweight for milk of 3.5 percent butterfat content as follows:

(1) Combine into one total the values computed pursuant to § 1011.60 for all handlers who filed the reports prescribed in § 1011.30 for the month and who made the payments pursuant to § 1011.71 for the preceding month;

(2) Add one-half the unobligated balance in the producer-settlement fund;

(3) Add an amount equal to the total value of the location adjustments computed pursuant to § 1011.75;

(4) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1011.60 (f); and

(5) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The resulting figure, rounded to the nearest cent, shall be the weighted average price for each month and the uniform price for the months of July through February.

(b) For each month of March through June, the market administrator shall compute the uniform prices per hundredweight for base milk and for excess milk, each of 3.5 percent butterfat content, as follows:

(1) Compute the total value of excess milk for all handlers included in the computations pursuant to paragraph (a)(1) of this section as follows:

(i) Multiply the hundredweight quantity of excess milk that does not exceed the total quantity of such handlers' producer milk assigned to Class III milk by the Class III price;

(ii) Multiply the remaining hundredweight quantity of excess milk that does not exceed the total quantity of such handlers' producer milk assigned to Class II milk by the Class II price;

(iii) Multiply the remaining hundredweight quantity of excess milk by the Class I price; and

(iv) Add together the resulting amounts;

(2) Divide the total value of excess milk obtained in paragraph (b)(1) of this section by the total hundredweight of such milk and adjust to the nearest cent. The resulting figure shall be the uniform price for excess milk;

(3) From the amount resulting from the computations pursuant to paragraph (a)(1) through (3) of this section, subtract an amount computed by multiplying the hundredweight of milk specified in paragraph (a)(4)(ii) of this section by the weighted average price;

(4) Subtract the total value of excess milk determined by multiplying the uniform price obtained in paragraph (b)(2) of this section times the hundredweight of excess milk from the amount computed pursuant to paragraph (b)(3) of this section;

(5) Divide the amount calculated pursuant to paragraph (b)(4) of this section by the total hundredweight of base milk included in these computations; and

(6) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (b)(5) of this section. The resulting figure, rounded to the nearest cent, shall be the uniform price for base milk.

[42 FR 40889, Aug. 12, 1977]

§ 1011.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 10th day after the end of each month the applicable uniform prices pursuant to § 1011.61 for such month.

[42 FR 40890, Aug. 12, 1977]

PAYMENTS FOR MILK

§ 1011.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1011.71, 1011.76, and 1011.77, and out of which he shall make all payments pursuant to §§ 1011.72 and 1011.77: *Provided*, That any payments due to any handler shall be offset by any payments due from such handler.

§ 1011.71 Payments to the producer-settlement fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1011.60.

(2) The sum of:

(i) The value at the uniform prices, as adjusted pursuant to § 1011.75, of such handler's receipts of producer milk and milk received from handlers pursuant to § 1011.9(c); and

(ii) The value at the weighted average price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1011.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more market-wide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

[41 FR 36796, Sept. 1, 1976, as amended at 42 FR 40890, Aug. 12, 1977]

§ 1011.72 Payments from the producer-settlement fund.

On or before the 13th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1011.71(a)(2) exceeds the amount computed pursuant to § 1011.71(a)(1). If at such time the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the appropriate funds are available.

§ 1011.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for producer milk for which payment is not made to a cooperative association pursuant to paragraph (b) of this section, as follows:

(1) On or before the last day of each month, for milk received during the first 15 days of the month from such producer who has not discontinued delivery of milk to such handler before the 25th day of the month at not less than the Class III price for the preceding month or 90 percent of the weighted average price for the preceding month, whichever is higher, less proper deductions authorized in writing by the producer; and

(2) On or before the 15th day of the following month, an amount equal to not less than the uniform price(s), as adjusted pursuant to §§ 1011.74 and 1011.75, multiplied by the hundredweight of milk or base milk and excess milk received from such producer during the month, subject to the following adjustments:

(i) Less payments made to such producer pursuant to paragraph (a)(1) of this section;

(ii) Less deductions for marketing services made pursuant to § 1011.86;

(iii) Plus or minus adjustments for errors made in previous payments made to such producers; and

(iv) Less proper deductions authorized in writing by such producer: *Provided*, That if by such date such handler has not received full payment from the market administrator pursuant to § 1011.72 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payments to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after the receipt of the balance due from the market administrator;

(b) Each handler shall make payment to the cooperative association for producer milk which it caused to be delivered to such handler, if such cooperative association is authorized to collect such payments for its members and exercises such authority, an amount equal to the sum of the individual payments otherwise payable for such producer milk as follows:

(1) On or before two days prior to the last day of each month for producer milk received during the first 15 days of the month; and

(2) On or before the 13th day after the end of each month for milk received during such month.

(c) Each handler pursuant to § 1011.9(a) who receives milk from a cooperative association as a handler pursuant to § 1011.9(c), including the milk of producers who are not members of such association, and who the market administrator determines have authorized such cooperative association to collect payment for their milk, shall pay such cooperative for such milk as follows:

(1) On or before two days prior to the last day of the month for milk received during the first 15 days of the month, not less than the Class III price for the preceding month or 90 percent of the weighted average price for the preceding month, whichever is higher; and

(2) On or before the 13th day of the following month for milk received during the month, not less than the appropriate uniform price(s) as adjusted pursuant to §§ 1011.74 and 1011.75, and less any payments made pursuant to paragraph (c)(1) of this section.

(d) In making payments for producer milk pursuant to this section, each handler shall furnish each producer or cooperative association from whom he has received milk a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The month and identity of the producer;

(2) The daily and total pounds and the average butterfat content of producer milk;

(3) For the months of March through June the total pounds of base milk received from the producer;

(4) The minimum rate(s) at which payment to the producer is required pursuant to this order;

(5) The rate(s) used in making the payment if such rate(s) is other than the applicable minimum rate(s);

(6) The amount, or the rate per hundredweight, and nature of each deduction claimed by the handler; and

(7) The net amount of payment to such producer or cooperative association.

[41 FR 36796, Sept. 1, 1976, as amended at 42 FR 40890, Aug. 12, 1977]

§ 1011.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price(s) shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the mid-point of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

[41 FR 36796, Sept. 1, 1976, as amended at 42 FR 40890, Aug. 12, 1977]

§ 1011.75 Plant location adjustments for producers and on nonpool milk.

(a) In making the payments required pursuant to § 1011.73, the uniform price and the uniform price for base milk pursuant to § 1011.61 for the month shall be adjusted by the amounts set forth in § 1011.52 according to the location of the plant where the milk being priced was received.

(b) For purposes of computing the value of other source milk pursuant to § 1011.71, the weighted average price shall be adjusted by the amount set forth in § 1011.52 that is applicable at the location of the nonpool plant from which the milk was received, except that the adjusted weighted average price shall not be less than the Class III price.

[42 FR 40890, Aug. 12, 1977]

§ 1011.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1011.30(b) and 1011.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants, handlers pursuant to § 1011.9(b) and (d), and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the weighted average price, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and weighted average price shall not be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1011.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant, a handler described in § 1011.9(b) or (d), or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant or as classified pursuant to § 1011.42 with respect to receipts from a handler described in § 1011.9 (b) or (d);

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1011.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1011.60 for such handler shall include, in lieu of the value of other source milk specified in § 1011.60(f) less the value of such other source milk specified in § 1011.71(a)(2)(ii), a value of milk determined pursuant to § 1011.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1011.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1011.30(b) and 1011.31(b) similar reports for each such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(*c*) The value of milk determined pursuant to § 1011.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1011.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1011.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

[41 FR 36796, Sept. 1, 1976, as amended at 42 FR 40890, Aug. 12, 1977; 47 FR 19671, May 7, 1982]

§ 1011.77 Adjustment of accounts.

Whenever verification by the market administrator of payments by any handler discloses errors made in payments to the producer-settlement fund pursuant to § 1011.71, the market administrator shall promptly bill such handler for an unpaid amount and such handler shall, within 15 days, make payment to the market administrator of the amount so billed. Whenever verification discloses that payment is due from the market administrator to any handler, pursuant to § 1011.72, the market administrator shall, within 15 days, make such payment to such handler. Whenever verification by the market administrator of the payment by a handler to any producer or cooperative association for milk received by such handler discloses payment of less than is required by § 1011.73, the handler shall pay such balance due such producer or cooperative association not later than the time of making payment to producers or cooperative associations next following such disclosure.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1011.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) Receipts of producer milk (including such handler's own production) other than such receipts by a handler described in § 1011.9(c) that were delivered to pool plants of other handlers;

(b) Receipts from a handler described in § 1011.9(c);

(c) Other source milk allocated to Class I pursuant to § 1011.44(a)(7) and (11) and the corresponding steps of § 1011.44(b), except such other source milk that is excluded from the computations pursuant to § 1011.60 (d) and (f); and

(d) Route disposition from a partially regulated distributing plant in the marketing area that exceeds the skim milk and butterfat specified in § 1011.76(a)(2).

§ 1011.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers for milk (other than milk of his own production) pursuant to § 1011.73, shall deduct 6 cents per hundredweight, or such amount not exceeding 6 cents per hundredweight, as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 15th day after the end of the month. Such money shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such service from a cooperative association.

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall (in lieu of the deduction specified in paragraph (a) of this section), make such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers, and on or before the 13th day after the end of each month, pay such deductions to the cooperative association of which such producers are members, furnishing a statement showing the amount of any such deductions and the amount of milk for which such deduction was computed for each producer.

BASE-EXCESS PLAN

§ 1011.90 Base milk.

"Base milk" means the producer milk of a producer in each month of March through June that is not in excess of the producer's base multiplied by the number of days in the month, except that for the months of March 1985 through June 1985 base milk shall be determined by the producer's base multiplied by the number of days in the month times the percentage of the producer's production pooled pursuant to § 1011.13.

[49 FR 34801, Sept. 4, 1984]

§ 1011.91 Excess milk.

"Excess milk" means the producer milk of a producer in each month of March through June in excess of the producer's base milk for the month, and shall include all the producer milk in such months of a producer who has no base.

[42 FR 40889, Aug. 12, 1977]

§ 1011.92 Computation of base for each producer.

(a) Subject to § 1011.93, the base for each producer shall be an amount obtained by dividing the total pounds of his producer milk during the immediately preceding months of September through December by the number of days' production represented by such producer milk or by 100, whichever is more. For producer bases to be calculated on or before February 1, 1985, and subject to § 1011.93, the base to be calculated for each producer shall be an amount obtained by dividing the total pounds of his producer milk (as defined under the respective orders) received from the producer by all handlers fully regulated under the terms of the respective orders regulating the handling of milk in the Georgia-Tennessee Valley; Louisville-Lexington-Evansville; Alabama-West Florida; Memphis, Tennessee; Nashville, Tennessee; Fort Smith, Arkansas; and Central Arkansas marketing areas (Parts 1007, 1011, 1046, 1093, 1097, 1098, 1102, and

1108, respectively, of this chapter) during the immediately preceding months of September through December 1984 by the number of days' production represented by such producer milk or by 100, whichever is more.

(b) The base for a producer whose milk was delivered to a nonpool plant that became a pool plant after the beginning of the base-forming period (September-December) shall be calculated as if the plant were a pool plant for the entire base forming period. A base thus assigned shall not be transferable. For bases calculated from the September-December 1984 base-forming period, the base for a producer whose milk was delivered to a plant that did not become a pool plant under any of the orders specified in paragraph (a) of this section until after the beginning of the base-forming period shall be calculated as if the plant were a pool plant under such orders for the entire base-forming period. A base thus assigned shall not be transferable.

[42 FR 40889, Aug. 12, 1977, as amended at 49 FR 34801, Sept. 4, 1984]

§ 1011.93 Base rules.

(a) Except as provided in § 1011.92(b) and in paragraph (b) of this section, a base may be transferred in its entirety or in amounts of not less than 300 pounds effective on the first day of the month following the date on which an application for such transfer is received by the market administrator. Such application shall be on a form approved by the market administrator and signed by the baseholder or his heirs and the person to whom the base is to be transferred. If a base is held jointly, the application shall be signed by all joint holders or their heirs.

(b) A producer who transferred base on or after February 1 may not receive by transfer additional base that would be applicable during March through June of the same year. A producer who received base by transfer on or after February 1 may not transfer a portion of his base to be applicable during March through June of the same year, but may transfer his entire base.

(c) The base established by a partnership may be divided between the partners on any basis agreed to in writing by them if written notification of the agreed-upon division of base signed by each partner is received by the market administrator prior to the first day of the month in which such division is to be effective.

(d) The base assigned a person who was a producer during any of the immediately preceding months of September through December may be increased to 90 percent of his average daily producer milk deliveries in the month immediately preceding the month during which a condition described in paragraph (d) (1), (2) or (3) of this section occurred, providing such producer submitted to the market administrator in writing on or before March 1 a statement that established to the satisfaction of the market administrator that in the immediately preceding September through December base-forming period the amount of milk produced on his farm was substantially reduced because of conditions beyond his control, which resulted from:

(1) The loss by fire or windstorm of a farm building used in the production of milk on his farm;

(2) Brucellosis, bovine tuberculosis or other infectious diseases in his milking herd as certified by a licensed veterinarian; or

(3) A quarantine by a Federal or State authority that prevents him from supplying milk from his farm to a plant.

[42 FR 40889, Aug. 12, 1977]

§ 1011.94 Announcement of established bases.

On or before February 1 of each year, the market administrator shall calculate a base for each person who was a producer during any of the immediately preceding months of September through December and shall notify each producer and the handler receiving milk from him of the base established by the producer. If requested by a cooperative association, the market administrator shall notify the cooperative association of each producer-member's base.

[42 FR 40889, Aug. 12, 1977]

PART 1012—MILK IN TAMPA BAY MARKETING AREA

Subpart—Order Regulating Handling

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1012.85 Assessment for order administration.
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AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended, 7 U.S.C. 601-674.

SOURCE: 37 FR 17732, Aug. 30, 1972, unless otherwise noted.

Subpart—Order Regulating Handling

GENERAL PROVISIONS

§ 1012.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1012.2 Tampa Bay marketing area.

The "Tampa Bay marketing area", hereinafter called the "marketing area", means all the territory geographically within the boundaries of the following counties, all in the State of Florida, including all waterfront facilities connected therewith and all territory wholly or partly therein occupied by Government (Municipal, State, or Federal) reservations, installations, institutions, or other similar establishments.

Charlotte, Collier, De Soto, Hardee, Hernando, Highlands, Hillsborough, Lee, Manatee, Pasco, Pinellas, Polk, Sarasota.

§ 1012.3 Route disposition.

"Route disposition" means a delivery either direct or through any distribution facility other than a plant (including disposition from a plant store, vendor, or vending machine) of a fluid milk product classified as Class I milk.

§ 1012.4 [Reserved]

§ 1012.5 Distributing plant.

"Distributing plant" means a plant that is approved by an appropriate health authority for the processing or packaging of Grade A milk and from which there is route disposition of any fluid milk product during the month in the marketing area.

§ 1012.6 Supply plant.

"Supply plant" means a plant from which a fluid milk product that is acceptable to the appropriate health authority for distribution in the marketing area as Grade A or filled milk is shipped during the month to a pool plant.

§ 1012.7 Pool plant.

Except as provided in paragraph (c) of this section, "pool plant" means:

(a) A distributing plant from which not less than 50 percent of the total Grade A fluid milk products, except filled milk, received at the plant during the month is disposed of as route disposition except as filled milk and not less than 10 percent of such receipts is disposed of in the marketing area as route disposition except as filled milk; or

(b) A supply plant from which not less than 50 percent of the Grade A milk received from dairy farmers at such plant during the month is shipped as fluid milk products, except filled milk, to pool plants pursuant to paragraph (a) of this section.

(c) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant; and

(2) A plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act, unless such plant meets the requirements of paragraph (a) or (b) of this section and a greater volume of fluid milk products, except filled milk, is disposed of from such plant in this marketing area as route disposition and to pool plants qualified on the basis of route disposition in this marketing area than in the marketing area regulated pursuant to such other order.

§ 1012.8 Nonpool plant.

"Nonpool plant" means a plant (except a pool plant) which receives milk from dairy farmers or is a milk or filled milk manufacturing, processing or bottling plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant and from which fluid milk products in consumer-type packages or dispenser units are distributed in the marketing area as route disposition during the month.

(d) "Unregulated supply plant" means a nonpool plant that is a supply plant and is neither an other order plant nor a producer-handler plant.

§ 1012.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) Any cooperative association with respect to producer milk which it causes to be diverted from a pool plant to a nonpool plant for the account of such cooperative association;

(c) A cooperative association with respect to milk of its producers which is delivered from the farm to the pool plant of another handler in a tank truck owned and operated by or under contract to such cooperative association. The milk for which a cooperative association is the handler pursuant to this paragraph shall be deemed to have been received at the location of the pool plant to which it was delivered;

(d) Any person in his capacity as the operator of a partially regulated distributing plant;

(e) A producer-handler; or

(f) Any person in his capacity as the operator of an other order plant that is either a distributing plant or a supply plant.

§ 1012.10 Producer-handler.

"Producer-handler" means any person who meets all the following conditions:

(a) Operates a dairy farm(s) from which the milk produced thereon is supplied to a plant operated by him in accordance with the requirements set forth in paragraph (b) of this section, and provides proof satisfactory to the market administrator that:

(1) The full maintenance of milk-producing cows on such farm(s) is at his sole risk and under his complete and exclusive management and control; and

(2) Each such farm is owned or operated by him, at his sole risk, and under his complete and exclusive management and control;

(b) Operates a plant in which milk approved by a duly constituted health authority for fluid consumption is processed or packaged and from which there is route disposition during the month in the marketing area pursuant to the following requirements:

(1) No fluid milk products are received at such plant or by him at any other location, except:

(i) From dairy farm(s) as specified in paragraph (a) of this section; and

(ii) Fluid milk products (other than whole milk) from pool plants in an amount that is not in excess of the lesser of 5,000 pounds or 5 percent of his Class I sales during the month;

(2) Such plant is operated under his complete and exclusive management and control and at his sole risk, and is not used during the month to process, package, receive, or otherwise handle fluid milk products for any other person; and

(c) Dispose of no other source milk (except that represented by nonfat solids used in the fortification of fluid milk products) as Class I milk.

§ 1012.11 [Reserved]

§ 1012.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the inspection requirements of a duly constituted health authority, which milk is received at a pool plant or diverted pursuant to § 1012.13 from a pool plant to a nonpool plant.

(b) The term "producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act; or

(2) Any person with respect to milk produced by him that is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I milk under the provisions of such other order.

[41 FR 43157, Sept. 30, 1976]

§ 1012.13 Producer milk.

"Producer milk" means the skim milk and butterfat contained in milk:

(a) Received at a pool plant directly from a producer or a handler described in § 1012.9(c): *Provided*, That if the milk received at a pool plant from a handler described in § 1012.9(c) is purchased on a basis other than farm weights, the amount by which the total farm weights of such milk exceed the weights on which the pool plant's purchases are based shall be producer milk received by the handler described in § 1012.9(c) at the location of the pool plant; or

(b) Diverted from a pool plant to a nonpool plant, other than a producer-handler plant, for the account of the pool plant operator or a cooperative association in any month in which not less than 10 days' production of the producer whose milk is diverted is physically received at a pool plant, subject to the following:

(1) Milk so diverted for the account of a handler operating a pool plant shall be deemed to have been received by the handler at the plant to which diverted and if diverted for the account of a cooperative association, shall be deemed to have been received by the cooperative association at the location of the plant to which diverted;

(2) If diverted from the pool plant of another handler for the account of a cooperative association, the aggregate

quantity of milk of member producers of the cooperative association so diverted that exceeds 25 percent of the milk physically received from such producers at pool plants during the month shall not be deemed to have been received at a pool plant and shall not be producer milk;

(3) If diverted by a handler operating a pool plant for his account, the aggregate quantity of producer milk so diverted that exceeds 25 percent of the aggregate quantity of milk physically received from producers at such plant during the month shall not be deemed to have been received at a pool plant and shall not be producer milk; and

(4) The diverting handler shall designate the dairy farmers whose milk is not producer milk pursuant to paragraphs (b)(2) and (3) of this section. If the handler fails to make such designation, no milk diverted by him shall be producer milk.

[37 FR 17732, Aug. 30, 1972, as amended at 41 FR 43157, Sept. 30, 1976]

§ 1012.14 Other source milk.

"Other source milk" means the skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk fluid cream products from any source except:

(1) Producer milk;

(2) Such products from pool plants; and

(3) Such products in inventory at the beginning of the month;

(b) Receipts of packaged fluid cream products and eggnog from other plants;

(c) Products, other than fluid milk products and fluid cream products, from any source (including those produced at the plant) which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Any disappearance of nonfluid products in a form in which they may be converted into a Class I product and which are not otherwise accounted for.

[41 FR 43157, Sept. 30, 1976, as amended at 46 FR 51235, Oct. 19, 1981]

§ 1012.15 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, acidophilus milk, flavored milk, flavored milk drinks (including milkshake mix), filled milk, and concentrated milk.

[46 FR 51235, Oct. 19, 1981]

§ 1012.16 Fluid cream product.

"Fluid cream product" means sweet cream or a mixture of sweet cream and milk or skim milk containing 9 percent or more butterfat. The term "fluid cream product" shall not include aerated cream and aerated cream products.

[41 FR 43157, Sept. 30, 1976]

§ 1012.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1012.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines after application by the association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and be engaged in making collective sales of or marketing milk or milk products for its members.

§ 1012.19 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1012.51a:

(a) *Butter price.* "Butter price" means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) *Cheddar cheese price.* "Cheddar cheese price" means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) *Nonfat dry milk price.* "Nonfat dry milk price" means the simple average, for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Division as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding work-day until the day such prices were previously reported. A work-day is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price.* "Edible whey price" means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

[47 FR 42965, Sept. 30, 1982]

HANDLER REPORTS

§ 1012.30 Reports of receipts and utilization.

On or before the 7th day after the end of each month, each handler (except a handler described in § 1012.9 (e) or (f)) shall report to the market administrator for such month with respect to each plant at which milk is received or at which filled milk is processed or packaged, reporting in detail and on forms prescribed by the market administrator:

(a) The quantities of skim milk and butterfat contained in or represented by:

(1) Producer milk (including such handler's own production) or, in the case of handlers described in § 1012.9(d), milk received from dairy farmers;

(2) Fluid milk products and bulk fluid cream products received from pool plants of other handlers;

(3) Other source milk;

(4) Milk diverted to nonpool plants pursuant to § 1012.13; and

(5) Inventories of fluid milk products and fluid cream products at the beginning and end of the month;

(b) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including a separate statement showing:

(1) The respective amounts of skim milk and butterfat disposed of as route disposition in the marketing area, showing separately the in-area disposition of filled milk; and

(2) For a handler described in § 1012.9(d), the amount of reconstituted skim milk in fluid milk products disposed of in the marketing area as route disposition; and

(c) Such other information with respect to the receipts and utilization of skim milk and butterfat as the market administrator may prescribe.

[37 FR 17732, Aug. 30, 1972, as amended at 41 FR 43157, Sept. 30, 1976]

§ 1012.31 Payroll reports.

(a) Each handler described in § 1012.9 (a), (b), and (c) shall report to the market administrator in detail and on forms prescribed by the market administrator on or before the 20th day after the end of the month his producer payroll for such month which shall show for each producer:

(1) His identity;

(2) The quantity of milk received from such producer and the number of days, if less than the entire month, on which milk was received from such producer;

(3) The average butterfat content of such milk; and

(4) The net amount of such handler's payment, together with the price paid and the amount and nature of any deductions.

(b) Each handler operating a partially regulated distributing plant who does not elect to make payments pursuant to § 1012.76(b) shall report to the market administrator on or before the 20th day after the end of the month the same information required of handlers pursuant to paragraph (a) of this section. In such report, payments to dairy farmers delivering Grade A milk shall be reported in lieu of payments to producers.

§ 1012.32 Other reports.

(a) Each producer-handler shall make reports to the market administrator at such time and in such manner as the market administrator may prescribe.

(b) Each handler who operates an other order plant shall report total receipts and utilization or disposition of skim milk and butterfat at the plant at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(c) Each handler described in § 1012.9(c) shall report to the market administrator in detail and on forms prescribed by the market administrator on or before the 7th day after the end of the month the quantities of skim milk and butterfat in producer milk delivered to each pool plant in such month.

CLASSIFICATION OF MILK

§ 1012.40 Classes of utilization.

Subject to the conditions set forth in §§ 1012.41 through 1012.44, all skim milk and butterfat required to be reported by a handler pursuant to § 1012.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product except as provided in paragraph (b) of this section;

(2) In packaged fluid milk products in inventory at the end of the month; and

(3) Not accounted for as Class II milk.

(b) *Class II milk.* Class II milk shall be:

(1) Skim milk and butterfat used to produce frozen desserts (e.g., ice cream, ice cream mix), sour cream, sour cream products (e.g., dips), yogurt, aerated cream and aerated cream products, butter, cheese (including cottage cheese), evaporated and condensed milk (plain or sweetened), nonfat dry milk, dry whole milk, dry whey, condensed or dry buttermilk, and a product which contains 6 percent or more nonmilk fat (or oil);

(1-a) Skim milk and butterfat disposed of in eggnog and in the form of a fluid cream product;

(2) Skim milk and butterfat in fluid milk products disposed of by a handler for livestock feed;

(3) Skim milk and butterfat in fluid milk products dumped by a handler after notification to, and opportunity for verification by, the market administrator;

(4) Skim milk and butterfat in inventory of eggnog, fluid cream products, and bulk fluid milk products at the end of the month;

(5) Skim milk represented by the nonfat solids added to a fluid milk product which is in excess of an equivalent volume of such product prior to the addition;

(6) Skim milk and butterfat, respectively, in shrinkage at each pool plant (except in milk diverted to a nonpool plant pursuant to § 1012.13) but not in excess of:

(i) Two percent of producer milk (including that received from a handler described in § 1012.9(c)) if the handler receiving such milk files notice with the market administrator that he is purchasing it on the basis of farm weights. Otherwise, the applicable percentage pursuant to this subdivision shall be 1.5 percent;

(ii) Plus 1.5 percent of bulk fluid milk products received from other pool plants;

(iii) Plus 1.5 percent of bulk fluid milk products received from other order plants exclusive of the quantity for which Class II utilization was requested by the operators of both plants;

(iv) Plus 1.5 percent of bulk fluid milk products received from unregulated supply plants exclusive of the quantity for which Class II utilization was requested by the handler; and

(v) Less 1.5 percent of bulk fluid milk products transferred to other plants; and

(7) Skim milk and butterfat in shrinkage of other source milk allocated pursuant to § 1012.41(b)(2).

[37 FR 17732, Aug. 30, 1972, as amended at 46 FR 51235, Oct. 19, 1981]

§ 1012.41 Shrinkage.

The market administrator shall allocate shrinkage over each pool plant's receipts as follows:

(a) Compute the total shrinkage of skim milk and butterfat, respectively, for each pool plant; and

(b) Prorate the resulting amounts between the receipts of skim milk and butterfat, respectively, in:

(1) The net quantity of producer milk and other fluid milk products specified in § 1012.40(b)(6); and

(2) Other source milk exclusive of that specified in § 1012.40(b)(6).

§ 1012.42 Classification of transfers and diversions.

Skim milk or butterfat shall be classified:

(a) At the utilization indicated by the operators of both plants, otherwise as Class I milk, if transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to the pool plant of another handler, subject to the following conditions:

(1) The skim milk or butterfat so assigned to each class shall be limited to the amount thereof remaining in such class in the transferee plant after computations pursuant to § 1012.44(a)(9) and the corresponding step of § 1012.44 (b);

(2) If the transferor plant received during the month other source milk to be allocated pursuant to § 1012.44(a)(3), the skim milk and butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor handler received during the month other source milk to be allocated pursuant to § 1012.44(a)(8) or (9) and the corresponding steps of § 1012.44(b), the skim milk and butterfat so transferred up to the total of such receipts shall not be classified as Class I milk to a greater extent than would be applicable to a like quantity of such other source milk received at the transferee plant.

(b) As Class I milk, if transferred or diverted in the form of a fluid milk product or a bulk fluid cream product to a nonpool plant that is neither an other order plant nor a producer-handler plant, unless the requirements of paragraph (b) (1) and (2) of this section are met, in which case the skim milk and butterfat so transferred or diverted shall be classified in accordance with the assignment resulting from paragraph (b)(3) of this section:

(1) The transferring or diverting handler claims classification in Class II in his report submitted pursuant to § 1012.30;

(2) The operator of such nonpool plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for the purpose of verification; and

(3) The skim milk and butterfat so transferred (in excess of receipts of skim milk and butterfat at the pool plant from such nonpool plant) shall be classified on the basis of the following assignment of utilization of such nonpool plant in excess of receipts of packaged fluid milk products from all pool plants and other order plants:

(i) Any Class I route disposition in the marketing area, then any transfers from such nonpool plant to pool plants which are assigned to Class I pursuant to § 1012.44(a)(8) and the corresponding step of § 1012.44(b), shall be assigned first to the skim milk and butterfat in the fluid milk products so transferred or diverted from pool plants, next pro rata to such receipts from other order plants, and thereafter to receipts from dairy farmers who the market administrator determines constitute the regular source of supply of Grade A milk for such nonpool plant;

(ii) Any Class I route disposition in the marketing area of an other order issued pursuant to the Act, then any transfers from such nonpool plant to an other order plant which are assigned to Class I pursuant to the provisions of such other order, shall be assigned first to the skim milk and butterfat in receipts of fluid milk products transferred or diverted from plants fully regulated by such order, next pro rata to such receipts from pool plants and other order plants not regulated by such order, and thereafter to receipts from dairy farmers who the market administrator determines constitute the regular source of supply for such nonpool plant;

(iii) Class I utilization in excess of that assigned pursuant to paragraphs (b)(3)(i) and (ii) of this section shall be assigned first to remaining receipts from dairy farmers who the market administrator determines constitute the regular source of supply for such nonpool plant and Class I utilization in excess of such receipts shall be assigned pro rata to unassigned receipts at such nonpool plant from all pool and other order plants; and

(iv) To the extent that Class I utilization is not so assigned to it, the skim milk and butterfat so transferred shall be classified as Class II milk.

(c) As follows, if transferred or diverted in the form of a fluid milk product or a bulk fluid cream product to an other order plant in excess of receipts of fluid milk products or bulk fluid cream products, respectively, from such plant in the same category as described in paragraph (c)(1), (2), or (3) of this section:

(1) If transferred in packaged form, classification shall be in the classes to which allocated under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (c)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II milk to the extent of the Class II utilization (or comparable utilization under such other order) available for such assignment pursuant to the allocation provisions of the other order;

(4) If information concerning the classification to which allocated under the other order is not available to the market administrator for purposes of establishing classification pursuant to this paragraph, classification shall be as Class I subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for more

than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and allocations to other classes shall be classified in a comparable classification as Class II milk; and

(6) If the form in which any fluid milk product is transferred to an other order plant is not defined as a fluid milk product under such other order, classification shall be in accordance with the provisions of § 1012.40.

(d) As Class I milk if transferred in the form of a fluid milk product from a pool plant to a producer-handler plant.

[37 FR 17732, Aug. 30, 1972, as amended at 41 FR 43157, Sept. 30, 1976]

§ 1012.43 General classification rules.

In determining the classification of producer milk pursuant to § 1012.44, the following rules shall apply:

(a) Each month, the market administrator shall correct for mathematical and other obvious errors all reports submitted pursuant to § 1012.30 and from such reports, shall compute for each handler the total pounds of skim milk and butterfat in each class.

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk used or disposed of in such product shall be considered to be a quantity equivalent to the nonfat milk solids contained in such product plus all the water originally associated with such solids.

§ 1012.44 Classification of producer milk.

After making the computations pursuant to § 1012.43, the market administrator shall determine the classification of producer milk for each handler for each month as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class II the pounds of skim milk classified as Class II pursuant to § 1012.40(b)(6);

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to paragraph (a)(3)(v) of this section, as follows:

(i) From Class II milk, the lesser of the pounds remaining or the quantity associated with such receipts and classified as Class II pursuant to § 1012.40(b)(5) plus 2 percent of the remainder of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(2-a) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any order issued pursuant to the Act is classified and priced as Class I milk at plant of origin and is not used as an offset on any other payment obligation pursuant to any other order;

(2-b) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in fluid cream products that were received in packaged form from other plants;

(2-c) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in each of the following:

(i) Inventory of eggnog at the beginning of the month; and

(ii) Inventory of packaged fluid cream products at the beginning of the month;

(3) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in each of the following:

(i) Other source milk, except that received in the form of a fluid milk product, that was not subtracted pursuant to paragraph (a)(2-b) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established, and receipts of fluid milk products from unidentified sources;

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order;

(iv) Receipts from unregulated supply plants consisting of reconstituted skim milk (including that in filled milk), and any skim milk received at the unregulated plant from producer-handlers and exempt plants defined in any order that were not subtracted pursuant to paragraph (a)(2-a) of this section; and

(v) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor plant;

(4) Subtract from the remaining pounds of skim milk in Class I the pounds of skim milk in inventory of packaged fluid milk products at the beginning of the month: *Provided*, That this paragraph shall not be applicable to a pool plant in any month immediately following a month in which such plant was not fully subject to the pooling and pricing provisions of this order;

(5) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II but not in excess of such quantity or quantities:

(i) Receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a) (2-a) and (3)(iv) of this section:

(*a*) For which the handler requests such utilization; or

(*b*) Which are in excess of the pounds of skim milk determined by subtracting from 125 percent of the pounds of skim milk remaining in Class I milk, the sum of the pounds of skim milk in producer milk, in receipts of fluid milk products from pool plants of other handlers, and in receipts of fluid milk products in bulk from other order plants that were not subtracted pursuant to paragraph (a)(3)(v) of this section;

(ii) Receipts of fluid milk products in bulk from an other order plant that were not subtracted pursuant to paragraph (a)(3)(v) of this section, in excess of similar transfers to such plant, if Class II utilization was requested by the operator of such plant and the handler.

(6) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class II milk, the pounds of skim milk in inventory of fluid milk products and fluid cream products at the beginning of the month that were not subtracted pursuant to paragraph (a)(4) of this section;

(7) Add to the remaining pounds of skim milk in Class II milk the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(8) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to paragraphs (a) (2-a), (3)(iv), and (5)(i) of this section;

(9) Subtract from the pounds of skim milk remaining in each class, in the following order, the pounds of skim milk in receipts of fluid milk products in bulk from other order plants, in excess in each case of similar transfers to the same plant, that were not subtracted pursuant to paragraphs (a) (3)(v) and (5)(ii) of this section:

(i) In series beginning with Class II, the pounds determined by multiplying the pounds of such receipts by the larger of the percentage of estimated Class II utilization of skim milk announced for the month by the market administrator pursuant to § 1012.45(a) or the percentage that Class II utilization remaining is of the total remaining utilization of skim milk of the handler; and

(ii) From Class I, the remaining pounds of such receipts;

(10) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products and bulk fluid cream products received from pool plants of other handlers according to the classification of such products pursuant to § 1012.42(a); and

(11) If the pounds of skim milk remaining exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class II. Any amounts so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section;

(c) Determine the weighted average butterfat content of producer milk in each class as computed pursuant to paragraphs (a) and (b) of this section.

[37 FR 17732, Aug. 30, 1972, as amended at 41 FR 43158, Sept. 30, 1976; 46 FR 51235, Oct. 19, 1981]

§ 1012.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for purposes of allocating receipts from other order plants pursuant to § 1012.44(a)(9) and the corresponding step of § 1012.44(b), the market administrator shall estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1012.44 on the basis of such report, and thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month, report to each cooperative association, upon request by such association, the percentage of the milk caused to be delivered by the cooperative association for its members which was utilized in each class at each pool plant receiving such milk. For the purpose of this report, the milk so received shall be allocated to each class at each pool plant in the same ratio as all producer milk received at such plant during the month.

[37 FR 17732, Aug. 30, 1972, as amended at 41 FR 43158, Sept. 30, 1976]

CLASS PRICES

§ 1012.50 Class prices.

Subject to the provisions of § 1012.52, the class prices for the month per hundredweight of milk shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.95, and plus $0.20 for the months of September 1984 through February 1985.

(b) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price computed pursuant to § 1012.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, except that in no event shall the final Class II price be less than the basic formula price: *Provided,* That for the first month this paragraph is effective the Class II price shall be the basic formula price for the month plus 15 cents.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1012.51 and add 15 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1012.51a.

[42 FR 46914, Sept. 19, 1977; 47 FR 42965, Sept. 30, 1982 and 49 FR 34801, Sept. 4, 1984]

§ 1012.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1012.51a Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1012.50 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1012.19 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following subparagraphs is of the total of the data represented in paragraph (c) (1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Statistical Reporting Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Statistical Reporting Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Progam for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

[47 FR 42966, Sept. 30, 1982]

§ 1012.52 Plant location adjustments for handlers.

(a) The Class I price for producer milk and other source milk at a plant located outside the State of Florida or within the State of Florida but outside the defined marketing area shall be adjusted at the rates set forth in the following schedule: *Provided*, That the resulting adjusted price for fluid milk products transferred from a pool plant to a plant regulated under another Federal order shall not be less than the Class I price under such other Federal order applicable at the location at the transferor plant:

Location of plant	Rate per cwt
Outside the State of Florida:	
For each 10 miles or fraction thereof from the City Hall in Tampa, Fla	Subtract 1.5 cents
Inside the State of Florida:	
In the defined marketing area of Part 1013	Add 20 cents
South of a line forming the southern boundary of the counties of Alachua, Dixie, Gilchrist, Putnam, and St. Johns, but outside the defined marketing area of Part 1013	No adjustment
North of a line forming the southern boundary of the counties of Alachua, Dixie, Gilchrist, Putnam, and St. Johns	Subtract 10 cents

(b) For the purpose of calculating location adjustments, receipts of fluid milk products from pool plants shall be assigned any remainder of Class I milk at the transferee plant that is in excess of the sum of producer milk receipts at such plant and that assigned as Class I to receipts from other order plants and unregulated supply plants. Such assignment shall be made in sequence according to the location adjustment applicable at each plant, beginning with the plant nearest the Tampa City Hall.

[37 FR 17732, Aug. 30, 1972, as amended at 49 FR 37568, Sept. 25, 1984]

§ 1012.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the final Class II price for the preceding month, except that the Class II price announced for the first month during which this section is effective shall be the price specified in the proviso in § 1012.50(b); and on or before the 15th day of each month the tentative Class II price for the following month.

[47 FR 42966, Sept. 30, 1982]

§ 1012.54 Equivalent price.

If for any reason a price quotation required by this part for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price that is required.

UNIFORM PRICE

§ 1012.60 Handler's value of milk for computing uniform price.

The net pool obligation of each handler described in § 1012.9 (a), (b), and (c) during each month shall be a sum of money computed by the market administrator as follows:

(a) Multiply the quantity of producer milk in each class as computed pursuant to § 1012.44(c) by the applicable class price;

(b) Add the amount obtained from multiplying the overage deducted from each class pursuant to § 1012.44(a)(11) and the corresponding step of § 1012.44(b) by the applicable class prices, as adjusted by the butterfat differential specified in § 1012.74;

(c) Add the amount obtained from multiplying the difference between the Class II price for the preceding month and the Class I price for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1012.44(a)(6) and the corresponding step of § 1012.44(b);

(d) Add an amount determined by multiplying the difference between the Class I price for the preceding month and Class I price for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1012.44(a)(4) and the corresponding step of § 1012.44(b). If the Class I price for the current month is less than the Class I price for the preceding month, the result would be a minus amount;

(e) Add an amount equal to the difference between the Class I and Class II price values at the pool plant of the skim milk and butterfat (excluding that contained in receipts of bulk fluid cream products from an other order plant) subtracted from Class I pursuant to § 1012.44(a)(3) and the corresponding step of § 1012.44(b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1012.44(a)(3) (iv) and (v) and the corresponding step of § 1012.44(b) the Class I price shall be adjusted to the location of the transferor-plant (but not to be less than the Class II price);

(f) Add the value at the Class I price adjusted for location of the nearest nonpool plant(s) from which an equivalent volume was received (but not to be less than the Class II price), of the skim milk and butterfat subtracted from Class I pursuant to § 1012.44(a)(8) and the corresponding step of § 1012.44(b), excluding such skim milk or butterfat in bulk receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by pool handlers defined in any order issued pursuant to the Act is classified and priced as Class I milk at plant of origin and is not used as an offset on any other payment obligation pursuant to any other order.

(g) For the first month that this paragraph is effective, subtract the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class II price, both for the preceding month, by the hundredweight of skim milk and butterfat in any fluid cream product that was in the handler's inventory at the end of the preceding month and classified as Class I milk.

(h) With respect to milk marketed on and after the effective date hereof, through February 1985, subtract the amount obtained by multiplying the pounds of bulk fluid milk products that were transferred to the handler's pool plant from another order plant and allocated to Class I milk, by a rate equal to 3.3 cents per hundredweight for each 10 miles or fraction thereof, less any difference (positive only) between the Class I differential applicable at the receiving plant less the Class I differential applicable at the shipping plant.

[37 FR 17732, Aug. 30, 1972, as amended at 41 FR 43158, Sept. 30, 1976; 42 FR 46914, Sept. 19, 1977; 49 FR 34801, Sept. 4, 1984]

§ 1012.61 Computation of uniform price.

For each month, the market administrator shall compute a uniform price for milk of 3.5 percent butterfat content as follows:

(a) Combine into one total the values computed pursuant to § 1012.60 for all handlers who filed the reports pursuant to § 1012.30 for the month, except those in default of payments required pursuant to § 1012.71 for the preceding month;

(b) [Reserved]

(c) Add an amount equal to the total value of the minus location adjustments computed pursuant to § 1012.75;

(d) Subtract an amount equal to the total value of the plus location adjustments computed pursuant to § 1012.75;

(e) Add an amount equal to one-half the unobligated balance in the producer-settlement fund;

(f) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1012.60(f); and

(g) Subtract not less than four cents nor more than five cents per hundredweight.

[37 FR 17732, Aug. 30, 1972, as amended at 42 FR 46914, Sept. 19, 1977]

§ 1012.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 11th day after the end of each month the uniform price for such month.

[42 FR 46914, Sept. 19, 1977]

Payments For Milk

§ 1012.70 Producer-settlement fund.

The market administrator shall maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments into such fund pursuant to §§ 1012.71 and 1012.76 and out of which he shall make all payments from such fund pursuant to § 1012.72: *Provided*, That the market administrator shall offset the payment due to a handler against payments due from such handler.

§ 1012.71 Payments to the producer-settlement fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the total amounts specified in paragraph (a)(1) of this section exceed the amounts specified in paragraph (a)(2) of this section:

(1) The net pool obligation pursuant to § 1012.60 for such handler; and

(2) The sum of:

(i) The value of such handler's producer milk at the uniform price, as adjusted pursuant to § 1012.75; and

(ii) The value at the uniform price applicable at the location of the plant(s) from which received (not to be less than the value at the Class II price) of other source milk for which a value is computed pursuant to § 1012.60(f).

(b) Each handler who operates an other order plant that is regulated under an order providing for individual-handler pooling shall pay to the market administrator for the producer-settlement fund, on or before the 25th day after the end of the month, an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of as route disposition in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant as route disposition in marketing areas regulated by two or more market pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each marketing area; and

(2) Compute the value of the quantity of reconstituted skim milk assigned in paragraph (b)(1) of this section to Class I disposition in this marketing area at the Class I price under this part applicable at the location of the other order plant (not to be less than the Class II price), and subtract its value at the Class II price.

[37 FR 17732, Aug. 30, 1972, as amended at 42 FR 46915, Sept. 19, 1977]

§ 1012.72 Payments from the producer-settlement fund.

On or before the 13th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1012.71(a)(2) exceeds the amount computed pursuant to § 1012.71(a)(1). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the funds are available.

§ 1012.73 Payments to producers and to cooperative associations.

(a) Except as provided in paragraph (b) of this section, each handler shall make payment for producer milk as follows:

(1) On or before the 20th day of the month to each producer who had not discontinued shipping milk to such handler before the 15th day of the month, not less than 85 percent of the uniform price for the preceding month per hundredweight of milk received during the first 15 days of the month, less proper deductions authorized in writing by such producer;

(2) On or before the 5th day of the following month to each producer who had not discontinued shipping milk to such handler before the last day of the month, not less than 85 percent of

the uniform price for the preceding month per hundredweight of milk received from the 16th through the last day of the month, less proper deductions authorized in writing by such producer; and

(3) On or before the 15th day of each month to each producer for milk received during the preceding month not less than the uniform price per hundredweight, adjusted pursuant to §§ 1012.74, 1012.75, and 1012.86, subject to the following:

(i) Minus payments made pursuant to paragraphs (a) (1) and (2) of this section;

(ii) Less proper deductions authorized in writing by such producer; and

(iii) If by such date such handler has not received full payment from the market administrator pursuant to § 1012.72 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after receipt of the balance due from the market administrator.

(b) In the case of a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and which has so requested any handler in writing, together with a written promise of such association to reimburse the handler the amount of any actual loss incurred by him because of any improper claim on the part of the association, such handler on or before the second day prior to the date on which payments are due individual producers, shall pay the cooperative association for milk received during the month from the producer-members of such association as determined by the market administrator an amount not less than the total due such producer-members pursuant to paragraph (a) of this section, subject to the following:

(1) Payment pursuant to this paragraph shall be made for milk received from any producer beginning on the first day of the month following receipt from the cooperative association of its certification that such producer is a member, and continuing through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the cooperative association; and

(2) Copies of the written request of the cooperative association to receive payments on behalf of its members, together with its promise to reimburse and its certified list of members shall be submitted simultaneously both to the handler and to the market administrator and shall be subject to verification by the market administrator at his discretion, through audit of the records of the cooperative association. Exceptions, if any, to the accuracy of such certification claimed by any producer or by a handler shall be made by written notice to the market administrator and shall be subject to his determination.

§ 1012.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A bulk butter per pound at Chicago, as reported by the Department for the month.

[42 FR 46915, Sept. 19, 1977]

§ 1012.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price for producer milk received at a pool plant shall be reduced according to the location of the pool plant at the rates set forth in § 1012.52; and

(b) For purposes of computations pursuant to §§ 1012.71 and 1012.72, the uniform price shall be adjusted at the rates set forth in § 1012.52 applicable at the location of the nonpool plant from which the milk was received.

§ 1012.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month either of the amounts (at the handler's election) calculated pursuant to paragraph (a) or (b) of this section. If the handler fails to report pursuant to §§ 1012.30 and 1012.31(b) the information necessary to compute the amount specified in paragraph (a) of this section, he shall pay the amount computed pursuant to paragraph (b) of this section:

(a) An amount computed as follows:

(1) The obligation that would have been computed pursuant to § 1012.60 at such plant shall be determined as though such plant were a pool plant, subject to the following modifications:

(i) Receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant;

(ii) Transfers from such nonpool plant to a pool plant or an other order plant shall be classified in the class to which allocated at the pool plant or other order plant. Class I milk transferred from such nonpool plant to pool plants and other order plants shall be valued at the uniform price of the respective order, except that reconstituted skim milk (including that in filled milk), and milk or skim milk from producer-handlers and exempt plants defined in any order shall be valued at the Class II price. No obligation shall apply to Class I milk transferred to a pool plant or an other order plant if such Class I utilization is assigned to receipts at the partially regulated distributing plant from pool plants and other order plants at which such milk was classified and priced as Class I milk;

(iii) Such handler's obligation shall include any charges computed pursuant to § 1012.60(f) and any credits computed pursuant to § 1012.71(a)(2)(ii) with respect to receipts of Class I milk from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk (including that in filled milk), and milk or skim milk from producer-handlers and exempt plants defined in any order shall be at the Class II price, unless an obligation with respect to such plant is computed as specified in (a)(1)(iv) of this section;

(iv) If the operator of the partially regulated distributing plant so requests and provides with his report pursuant to § 1012.30 a similar report for each nonpool plant which serves as a supply plant for such partially regulated distributing plant by shipment to such plant during the month equivalent to the requirements of § 1012.7(b) with agreement of the operator of such plant that the market administrator may examine the books and records of such plant for purposes of verification of such reports, there will be added the amount of the obligation computed at such nonpool supply plant in the same manner and subject to the same conditions as for the partially regulated distributing plant.

(2) From this obligation, deduct the sum of:

(i) The gross payments made by such handler, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1012.74, for Grade A milk received during the month from dairy farmers at such plant and like payments made by the operator of a supply plant(s) included in the computations pursuant to paragraph (a)(1) of this section; and

(ii) Payments to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant.

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as route disposition in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received at the partially regulated distributing plant as follows:

(i) Any Class I milk from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act; and

(ii) Receipts from a nonpool plant that is not an other order plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such nonpool plant by handlers fully regulated under any order issued pursuant to the Act is classified and priced as Class I milk and is not used as an offset on any other payment obligation pursuant to any other order;

(3) Deduct from any remainder the quantity of reconstituted skim milk, and milk or skim milk contained in receipts from producer-handlers and exempt plants defined in any order disposed of as route disposition in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total;

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the uniform price applicable at such location, and add for the quantity of milk deducted pursuant to paragraph (b)(3) of this section its value computed at the Class I price applicable at the location of the nonpool plant less the value of such milk at the Class II price. For purposes of this paragraph (a)(5), the prices shall not be adjusted to less than the Class II price.

[37 FR 17732, Aug. 30, 1972, as amended at 42 FR 46915, Sept. 19, 1977]

§ 1012.77 Adjustment of accounts.

When verification by the market administrator of reports or payments of a handler discloses errors resulting in monies due the market administrator from such handler, such handler from the market administrator, or a producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made not later than the date for making payment next following such disclosure.

§ 1012.78 Charges on overdue accounts.

The unpaid obligation of a handler pursuant to §§ 1012.71, 1012.77, 1012.85, and 1012.86 shall be increased one-half of one percent for each month or portion thereof that such obligation is overdue.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1012.85 Assessment for order administration.

As his pro rata share of the expense of administration of this part, each handler shall pay to the market administrator on or before the 15th day after the end of the month 4 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to:

(a) Producer milk (including such handler's own production);

(b) Any other source milk allocated to Class I milk pursuant to § 1012.44(a)(3) and (8) and the corresponding step of § 1012.44(b), except such other source milk excluded from pool obligations pursuant to § 1012.60(e) and (f); and

(c) Class I milk disposed of in the marketing area from a partially regulated distributing plant that exceeds the hundredweight of Class I milk:

(1) Received during the month at such plant from pool plants and other order plants that is not used as an offset under a similar provision of another order issued pursuant to the Act; and

(2) Specified in § 1012.76(b)(2)(ii).

[37 FR 17732, Aug. 30, 1972, as amended at 41 FR 43158, Sept. 30, 1976]

§ 1012.86 Deduction for marketing services.

(a) Except as provided in paragraph (b) of this section, each handler in making payments for producer milk received during the month shall deduct 4 cents per hundredweight or such lesser amount as the Secretary may prescribe (except on such handler's own farm production) and shall pay such deductions to the market administrator not later than the 15th day after the end of the month. Such money shall be used by the market administrator to verify or establish weights, samples and tests of producer milk and to provide producers with market information. Such services shall be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him.

(b) In the case of products for whom a cooperative association is performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions as are authorized by such producers and, on or before the 15th day after the end of each month, pay over such deductions to the association rendering such services.

PART 1013—MILK IN SOUTHEASTERN FLORIDA MARKETING AREA

Subpart—Order Regulating Handling

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1013.85 Assessment for order administration.
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AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

SOURCE: 37 FR 17739, Aug. 30, 1972, unless otherwise noted.

Subpart—Order Regulating Handling

GENERAL PROVISIONS

§ 1013.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1013.2 Southeastern Florida marketing area.

The "Southeastern Florida marketing area," hereinafter called the "marketing area," means all the territory geographically within the boundaries of the following counties, all in the State of Florida, including all Government reservations and incorporated municipalities within this territory:

Broward, Dade, Glades, Hendry, Indian River, Martin, Monroe, Okeechobee, Palm Beach, St. Lucie.

§ 1013.3 Route disposition.

"Route disposition" means any delivery to retail or wholesale outlets (including delivery by a vendor, or a sale from or through a plant store, or by vending machine) of any product in a form designated as Class I milk pursuant to § 1013.40(a), but does not include delivery to a milk or filled milk receiving or processing plant.

§ 1013.4 [Reserved]

§ 1013.5 Distributing plant.

"Distributing plant" means a plant approved by a duly constituted health authority for the processing or packaging of Grade A milk which has route disposition of fluid milk products in the marketing area during the month.

§ 1013.6 Supply plant.

"Supply plant" means a plant from which a fluid milk product acceptable to a duly constituted health authority is shipped during the month to a pool plant.

§ 1013.7 Pool plant.

Except as provided in paragraph (c) of this section, "pool plant" means:

(a) A distributing plant from which not less than 50 percent of the total Grade A fluid milk products, except filled milk, received at the plant during the month is disposed of as route disposition (excluding filled milk), and from which not less than 10 percent of such receipts is disposed of in the marketing area as route disposition (excluding filled milk); or

(b) A supply plant from which not less than 50 percent of the Grade A milk received from dairy farmers at such plant during the month is shipped as fluid milk products, except filled milk, to pool plants pursuant to paragraph (a) of this section.

(c) The term "pool plant" shall not apply to:

(1) A producer-handler plant;

(2) Any plant meeting the requirements of a pool plant pursuant to paragraph (b) of this section but not pursuant to paragraph (a) of this section which, if it were not a pool plant under this part, would be fully subject to the classification and pooling provisions of another order issued pursuant to the Act;

(3) Any plant meeting the requirements of a pool plant pursuant to paragraph (b) of this section but not pursuant to paragraph (a) of this section at which all receipts of skim milk and butterfat during the month would be priced and pooled under the terms of an other order(s) issued pursuant to the Act if such plant were not a pool plant under this order: *Provided*, That such pricing and pooling results in all skim milk and butterfat disposed of from the plant in the form of milk and skim milk during the month being Class I milk under the terms of another order(s) issued pursuant to the Act;

(4) Any plant which does not dispose of a greater volume of Class I milk, except filled milk, as route disposition in the Southeastern Florida marketing area than in the marketing area regulated pursuant to such other order; and

(5) Any building, premises, or facilities, the primary function of which is to hold or store bottled milk or milk products (including filled milk) in finished form, nor shall it include any part of a plant in which the operations are entirely separated (by wall or other partition) from the handling of producer milk.

§ 1013.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which skim milk and butterfat in the form of products designated as Class I milk pursuant to § 1013.40(a) in consumer-type packages or dispenser units are distributed as route disposition in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant from which skim milk and butterfat in the form of products designated as Class I milk pursuant to § 1013.40(a) are moved to a pool plant during the month.

§ 1013.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) Any cooperative association with respect to producer milk which it causes to be diverted from a pool plant to a nonpool plant for the account of such cooperative association;

(c) Any cooperative association with respect to milk of its producer-members which is delivered from the farm to the pool plant of another handler in a tank truck owned and operated by or under contract to such cooperative association. The milk for which a cooperative association is the handler pursuant to this paragraph shall be deemed to have been received at the location of the pool plant to which it was delivered;

(d) Any person in his capacity as the operator of a partially regulated distributing plant;

(e) A producer-handler; or

(f) Any person in his capacity as the operator of an other order plant that is either a distributing plant or a supply plant.

§ 1013.10 Producer-handler.

"Producer-handler" means any person who meets all the conditions of paragraphs (a), (b), and (c) of this section:

(a) Operates a dairy farm(s) from which the milk produced thereon is supplied to a plant operated by him in accordance with the requirements set forth in paragraph (b) of this section, and provides proof satisfactory to the market administrator that:

(1) The full maintenance of milk-producing cows on such farm(s) is at his sole risk and under his complete and exclusive management and control; and

(2) Each such farm is owned or operated by him, at his sole risk, and under his complete and exclusive management and control;

(b) Operates a plant in which milk approved by a duly constituted health authority for fluid consumption is processed or packaged and from which there is route disposition during the month in the marketing area pursuant to the following requirements:

(1) No fluid milk products are received at such plant or by him at any other location, except:

(i) From dairy farm(s) as specified in paragraph (a) of this section; and

(ii) Fluid milk products (other than whole milk) from pool plants in an amount that is not in excess of the lesser of 5,000 pounds or 5 percent of his Class I sales during the month;

(2) Such plant is operated under his complete and exclusive management and control and at his sole risk, and is not used during the month to process, package, receive, or otherwise handle fluid milk products for any other person; and

(c) Disposes of no other source milk (except that represented by nonfat solids used in the fortification of fluid milk products) as Class I milk.

(d) Sections 1013.50 through 1013.86 shall not apply to a producer-handler.

§ 1013.11 [Reserved]

§ 1013.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk (and who is responsible for the milk production enterprise on a continuing basis as to management and risk) in compliance with the inspection requirements of a duly constituted health authority for fluid consumption (as used in this part compliance with inspection requirements shall include production of milk acceptable to agencies of the U.S. Government located in the marketing area for fluid consumption).

(b) The term "producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act; or

(2) Any person with respect to milk produced by him that is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I milk under the provisions of such other order.

[41 FR 43158, Sept. 30, 1976]

§ 1013.13 Producer milk.

"Producer milk" means the skim milk and butterfat contained in milk:

(a) Received at a pool plant directly from a producer or a handler pursuant to § 1013.9(c): *Provided*, That if the milk received at a pool plant from a handler described in § 1013.9(c) is purchased on a basis other than farm weights, the amount by which the total farm weights of such milk exceed the weights on which the pool plant's purchases are based shall be producer milk received by the handler described in § 1013.9(c) at the location of the pool plant; or

(b) Diverted from a pool plant to a nonpool plant, other than a producer-handler plant, for the account of the pool plant operator or a cooperative association, subject to the following:

(1) Milk so diverted for the account of a handler operating a pool plant shall be deemed to have been received by the handler at the plant to which diverted and if diverted for the account of a cooperative association, shall be deemed to have been received by the cooperative association at the location of the plant to which diverted;

(2) If diverted from the pool plant of another handler for the account of a cooperative association, the aggregate quantity of milk of member producers of the cooperative association so diverted that exceeds 25 percent of the milk physically received from such producers at pool plants during the month shall not be deemed to have been received at a pool plant and shall not be producer milk;

(3) If diverted by a handler operating a pool plant for his account, the aggregate quantity of producer milk so diverted that exceeds 25 percent of the aggregate quantity of milk physically received from producers at such plant during the month shall not be deemed to have been received at a pool plant and shall not be producer milk; and

(4) The diverting handler shall designate the dairy farmers whose milk is not producer milk pursuant to paragraphs (b) (2) and (3) of this section. If the handler fails to make such designation, no milk diverted by him shall be producer milk.

[37 FR 17739, Aug. 30, 1972, as amended at 41 FR 43158, Sept. 30, 1976]

§ 1013.14 Other source milk.

"Other source milk" means the skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk fluid cream products from any source except:

(1) Producer milk;

(2) Such products from pool plants; and

(3) Such products in inventory at the beginning of the month;

(b) Receipts of packaged fluid cream products and eggnog from other plants;

(c) Products, other than fluid milk products and fluid cream products, from any source (including those produced at the plant) which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Any disappearance of nonfluid products in a form in which they may be converted into a Class I product and which are not otherwise accounted for.

[41 FR 43158, Sept. 30, 1976, as amended at 46 FR 51235, Oct. 19, 1981]

§ 1013.15 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, acidophilus milk, flavored milk, flavored milk drinks (including milkshake mix), filled milk, and concentrated milk.

[46 FR 51235, Oct. 19, 1981]

§ 1013.16 Fluid cream product.

"Fluid cream product" means sweet cream or a mixture of sweet cream and milk or skim milk containing 9 percent or more butterfat. The term "fluid cream product" shall not include aerated cream and aerated cream products.

[41 FR 43158, Sept. 30, 1976]

§ 1013.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1013.18 Cooperative association.

"Cooperative association" means any cooperative association of producers which the Secretary determines, after application by the association: (a) To be qualified under the provisions of the act of Congress of February 19, 1922, as amended, known as the "Capper-Volstead Act"; (b) to have full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk or its products for its members; and (c) to have its entire activities under the control of its members.

§ 1013.19 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1013.51a:

(a) *Butter price.* "Butter price" means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) *Cheddar cheese price.* "Cheddar cheese price" means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) *Nonfat dry milk price.* "Nonfat dry milk price" means the simple average, for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Division as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding work-day until the day such prices were previously reported. A work-day is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price.* "Edible whey price" means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

[47 FR 42966, Sept. 30, 1982]

HANDLER REPORTS

§ 1013.30 Reports of receipts and utilization.

On or before the 7th day after the end of each month, each handler, except a handler pursuant to § 1013.9 (e) or (f), shall report to the market administrator for such month, and for each accounting period in each month, with respect to each plant at which milk is received or at which filled milk is processed or packaged in detail and on forms prescribed by the market administrator, as follows:

(a) The quantities of skim milk and butterfat contained in or represented by receipts of:

(1) Producer milk (or in the case of handlers described in § 1013.9(d) Grade A milk received from dairy farmers);

(2) Fluid milk products and bulk fluid cream products received from pool plants;

(3) Other source milk;

(4) Milk diverted to nonpool plants pursuant to § 1013.13; and

(5) Inventories of fluid milk products and fluid cream products at the beginning and end of the month or accounting period;

(b) The utilization of all skim milk and butterfat required to be reported pursuant to paragraph (a) of this section, including a separate statement showing:

(1) The respective amounts of skim milk and butterfat disposed of as route disposition entirely outside the marketing area, showing separately the in-area and outside area route disposition of filled milk; and

(2) For a handler described in § 1013.9(d), the amount of reconstituted skim milk in fluid milk products disposed of as route disposition in the marketing area;

(c) Such other information with respect to receipts and utilization as the market administrator may request; and

(d) Each handler who submits reports on the basis of accounting periods of less than a month, as described in § 1013.44(d), shall submit a summary report of the same information for the entire month.

[37 FR 17739, Aug. 30, 1972, as amended at 41 FR 43159, Sept. 30, 1976]

§ 1013.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1013.9 (a), (b), or (c) shall report to the market administrator, in detail and on forms prescribed by the market administrator, his producer payroll for that month, which shall show for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The days for which milk was received from such producer.

(4) The average butterfat [illegible]ent of such milk; and

(5) The net amount of th[illegible]dler's payment with respect to su[illegible]ilk to the producer or cooperati[illegible]sociation, together with the pric[illegible]d and the amount and nature of [illegible]eductions.

(b) Each handler making [illegible]ents pursuant to § 1013.76(a) sh[illegible]port the information required pu[illegible]t to paragraph (a) of this sectior [illegible] reports receipts of Grade A [illegible]om dairy farmers shall be report[illegible]lieu of those in producer milk, [illegible] payments to dairy farmers deliv[illegible] such milk shall be reported in [illegible] payments to producers.

§ 1013.32 Other reports.

(a) Each producer-handl[illegible] shall make reports to the market administrator at such time and in such manner as the market administrator may prescribe.

(b) Each handler who operates an other order plant shall report total receipts and utilization or disposition of skim milk and butterfat at the plant at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(c) Each handler described in § 1013.9(c) shall report to the market administrator in detail and on forms prescribed by the market administrator on or before the 7th day after the end of the month the quantities of skim milk and butterfat in producer milk delivered to each pool plant in such month.

(d) Each handler described in § 1013.9 (a), (b), or (c) shall report to the market administrator:

(1) On or before the first day other source milk as defined in § 1013.14(a) is received at his pool plants, his intention to receive such product, and on or before the last day such product is received, his intention to discontinue receipt of such product; and

(2) Such other information with respect to his receipts and utilization of butterfat and skim milk and at such times as the market administrator shall prescribe.

CLASSIFICATION OF MILK

§ 1013.40 Classes of utilization.

Subject to the conditions set forth in §§ 1013.41 through 1013.44, the skim milk and butterfat required to be reported pursuant to § 1013.30(a) shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product except as provided in paragraphs (b) and (c) of this section;

(2) In packaged fluid milk products in inventory at the end of the month; and

(3) Not accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be:

(1) Skim milk and butterfat used to produce frozen desserts (e.g., ice cream, ice cream mix), sour cream, sour cream products (e.g., dips), yogurt, aerated cream and aerated cream products, butter, cheese (including cottage cheese), evaporated and condensed milk (plain or sweetened), nonfat dry milk, dry whole milk, dry whey, condensed or dry buttermilk, and a product which contains 6 percent or more nonmilk fat (or oil);

(1-a) Skim milk and butterfat disposed of in eggnog and in the form of a fluid cream product;

(2) Except as provided in paragraph (c) of this section, skim milk and butterfat in fluid milk products disposed of by a handler for livestock feed;

(3) Except as provided in paragraph (c) of this section, skim milk and butterfat in fluid milk products dumped by a handler after notification to, and opportunity for verification by, the market administrator;

(4) Skim milk and butterfat in inventory of eggnog, fluid cream products, and bulk fluid milk products at the end of the month;

(5) Skim milk represented by the nonfat solids added to a fluid milk product which is in excess of an equivalent volume of such product prior to the addition;

(6) Skim milk and butterfat, respectively, in shrinkage at each pool plant (except in milk diverted to a nonpool plant pursuant to § 1013.13) but not in excess of:

(i) Two percent of producer milk (including that received from a handler described in § 1013.9(c)) if the handler receiving such milk files notice with the market administrator that he is purchasing it on the basis of farm weights. Otherwise, the applicable percentage pursuant to this subdivision shall be 1.5 percent;

(ii) Plus 1.5 percent of bulk fluid milk products received from other pool plants;

(iii) Plus 1.5 percent of bulk fluid milk products received from other order plants exclusive of the quantity for which Class II utilization was requested by the operators of both plants;

(iv) Plus 1.5 percent of bulk fluid milk products received from unregulated supply plants exclusive of the quantity for which Class II utilization was requested by the handler; and

(v) Less 1.5 percent of bulk fluid milk products transferred to other plants; and

(7) Skim milk and butterfat in shrinkage of other source milk allocated pursuant to § 1013.41(b)(2).

(c) *Class III milk.* Class III milk shall be all milk, the skim milk portion of which is:

(1) Disposed of for fertilizer or livestock feed; or

(2) Dumped after such prior notification as the market administrator may require.

[37 FR 17739, Aug. 30, 1972, as amended at 46 FR 51235, Oct. 19, 1981]

§ 1013.41 Shrinkage.

The market administrator shall allocate shrinkage over each pool plant's receipts as follows:

(a) Compute the total shrinkage of skim milk and butterfat, respectively, for each pool plant; and

(b) Prorate the resulting amounts between the receipts of skim milk and butterfat, respectively, in:

(1) The net quantity of producer milk and other fluid milk products specified in § 1013.40(b)(6); and

(2) Other source milk exclusive of that specified in § 1013.40(b)(6).

§ 1013.42 Classification of transfers and diversions.

Skim milk or butterfat shall be classified:

(a) At the utilization indicated by the operators of both plants, otherwise as Class I milk, if transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to the pool plant of another handler, subject to the following conditions:

(1) The skim milk or butterfat so assigned to each class shall be limited to the amount thereof remaining in such class in the transferee plant after computations pursuant to § 1013.44(a)(10) and the corresponding step of § 1013.44(b);

(2) If the transferor plant received during the month other source milk to be allocated pursuant to § 1013.44(a)(3) and (4), the skim milk and butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor handler received during the month other source milk to be allocated pursuant to § 1013.44(a)(9) or (10) and the corresponding steps of § 1013.44(b), the skim milk and butterfat so transferred up to the total of such receipts shall not be classified as Class I milk to a greater extent than would be applicable to a like quantity of such other source milk received at the transferee plant.

(b) As Class I milk, if transferred or diverted in the form of a fluid milk product or a bulk fluid cream product to a nonpool plant that is neither an other order plant nor a producer-handler plant, unless the requirements of paragraphs (b)(1) and (2) of this section are met, in which case the skim milk and butterfat so transferred or diverted shall be classified in accordance with the assignment resulting from paragraph (b)(3) of this section:

(1) The transferring or diverting handler claims classification in Class II or Class III in his report submitted to the market administrator pursuant to § 1013.30;

(2) The operator of such nonpool plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for the purpose of verification; and

(3) The skim milk and butterfat so transferred (in excess of receipts of skim milk and butterfat at the pool plant from such nonpool plant) shall be classified on the basis of the following assignment of utilization at such nonpool plant in excess of receipts of packaged fluid milk products from all pool plants and other order plants:

(i) Any Class I route disposition in the marketing area, then any transfers from such nonpool plant to pool plants which are assigned to Class I pursuant to § 1013.44(a)(9) and the corresponding step of § 1013.44(b), shall be assigned first to the skim milk and butterfat in the fluid milk products so transferred or diverted from pool plants, next pro rata to such receipts from other order plants, and thereafter to receipts from dairy farmers who the market administrator determines constitute the regular source of supply of Grade A milk for such nonpool plant;

(ii) Any Class I route disposition in the marketing area of an other order issued pursuant to the Act, then any transfers from such nonpool plant to an other order plant which are assigned to Class I pursuant to the provisions of such other order, shall be assigned first to the skim milk and butterfat in receipts of fluid milk products transferred or diverted from plants fully regulated by such order, next pro rata to such receipts from pool plants and other order plants not regulated by such order, and thereafter to receipts from dairy farmers who the market administrator determines constitute the regular source of supply for such nonpool plant;

(iii) Class I utilization in excess of that assigned pursuant to paragraphs (b)(3) (i) and (ii) of this section shall be assigned first to remaining receipts from dairy farmers who the market administrator determines constitute the regular source of supply for such nonpool plant and Class I utilization in excess of such receipts shall be assigned pro rata to unassigned receipts at such nonpool plant from all pool and other order plants; and

(iv) To the extent that Class I utilization is not so assigned to it the skim milk and butterfat in fluid milk products so transferred shall be classified as Class III milk to the extent available and the remainder as Class II milk.

(c) As follows, if transferred or diverted in the form of a fluid milk product or a bulk fluid cream product to an other order plant in excess of receipts of fluid milk products or bulk fluid cream products, respectively, from such plant in the same category as described in paragraph (c) (1), (2), or (3) of this section:

(1) If transferred in packaged form, classification shall be in the classes to which allocated under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (c)(3) of this section;

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II milk to the extent of the Class II utilization (or comparable utilization under such other order) available for such assignment pursuant to the allocation provisions of the other order;

(4) If information concerning the classification to which allocated under the other order is not available to the market administrator for purposes of establishing classification pursuant to this paragraph, classification shall be as Class I subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and allocations to other classes shall be classified in a comparable classification as Class II milk; and

(6) If the form in which any fluid milk product is transferred to another order plant is not defined as a fluid milk product under such other order, classification shall be in accordance with the provisions of § 1013.40.

(d) As Class I milk if transferred in the form of a fluid milk product from a pool plant to a producer-handler plant.

[37 FR 17739, Aug. 30, 1972, as amended at 41 FR 43159, Sept. 30, 1976]

§ 1013.43 General classification rules.

In determining the classification of producer milk pursuant to § 1013.44, the following rules shall apply:

(a) Each month, the market administrator shall correct for mathematical and other obvious errors, the reports submitted by each handler pursuant to § 1013.30(a) and compute the total pounds of skim milk and butterfat, respectively, in Class I milk, Class II milk, and Class III milk at each pool plant.

(b) The skim milk contained in any product utilized, produced or disposed of by the handler during the month shall be considered to be an amount equivalent to the nonfat milk solids contained in such product, plus all of the water originally associated with such solids.

§ 1013.44 Classification of producer milk.

After making the computations pursuant to § 1013.43, the market administrator shall determine the classification of producer milk for each handler for each month or other accounting period described in paragraph (d) of this section as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class II the pounds of skim milk classified as Class II pursuant to § 1013.40(b)(6);

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to paragraph (a)(4)(iv) of this section, as follows:

(i) From Class II milk, the lesser of the pounds remaining or the quantity associated with such receipts and classified as Class II pursuant to § 1013.40(b)(5) plus 2 percent of the remainder of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(2-a) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any order issued pursuant to the Act is classified and priced as Class I milk at plant of origin and is not used as an offset on any other payment obligation pursuant to any other order;

(2-b) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in fluid cream products that were received in packaged form from other plants;

(2-c) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in each of the following:

(i) Inventory of eggnog at the beginning of the month; and

(ii) Inventory of packaged fluid cream products at the beginning of the month;

(3) Subtract from the remaining pounds of skim milk in Class I and Class II, in series beginning with Class II, the pounds of skim milk in other source milk, except that received in the form of a fluid milk product, that was not subtracted pursuant to paragraph (a)(2-b) of this section;

(4) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established, and receipts of fluid milk products from unidentified sources;

(ii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order;

(iii) Receipts from unregulated supply plants consisting of reconstituted skim milk (including that in filled milk) and any skim milk received at the unregulated plant from producer-handlers and exempt plants defined in any order that were not subtracted pursuant to paragraph (a)(2-a) of this section; and

(iv) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor plant;

(5) Subtract from the remaining pounds of skim milk in Class I the pounds of skim milk in inventory of packaged fluid milk products at the beginning of the month: *Provided*, That this paragraph shall not be applicable to a pool plant in any month immediately following a month in which such plant was not fully subject to the pooling and pricing provisions of this order;

(6) Subtract, in the order specified below, from the pounds of skim milk remaining in Class III and/or Class II (beginning with Class III unless otherwise specified) but not in excess of such quantity or quantities:

(i) Receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2-a) and (4)(iii) of this section:

(*a*) For which the handler requests such utilization; or

(b) Which are in excess of the pounds of skim milk determined by subtracting from 125 percent of the pounds of skim milk remaining in Class I milk, the sum of the pounds of skim milk in producer milk, in receipts of fluid milk products from pool plants of other handlers, and in receipts of fluid milk products in bulk from other order plants that were not subtracted pursuant to paragraph (a)(4)(iv) of this section;

(ii) Receipts of fluid milk products in bulk from an other order plant that were not subtracted pursuant to paragraph (a)(4)(iv) of this section, in excess of similar transfers to such plant, if Class II utilization was requested by the operator of such plant and the handler;

(7) Subtract from the pounds of skim milk remaining in Class I and Class II, in series beginning with Class II, the pounds of skim milk in inventory of fluid milk products and bulk fluid cream products at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) of this section;

(8) Add to the remaining pounds of skim milk in Class II milk the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(9) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to paragraphs (a) (2-a), (4)(iii), and (6)(i) of this section;

(10) Subtract from the pounds of skim milk remaining in each class, in the following order, the pounds of skim milk in receipts of fluid milk products in bulk from other order plants, in excess in each case of similar transfers to the same plant, that were not subtracted pursuant to paragraphs (a) (4)(iv) and (6)(ii) of this section;

(i) In series beginning with Class III and thereafter from Class II, the pounds determined by multiplying the pounds of such receipts by the larger of the percentage of estimated Class II and Class III utilization of skim milk announced for the month by the market administrator pursuant to § 1013.45(a) or the percentage that Class II and Class III utilization remaining is of the total remaining utilization of skim milk of the handler, and

(ii) From Class I, the remaining pounds of such receipts;

(11) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products and bulk fluid cream products received from pool plants of other handlers according to the classification of such products pursuant to § 1013.42(a); and

(12) If the pounds of skim milk remaining exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section;

(c) Determine the weighted average butterfat content of producer milk in each class as computed pursuant to paragraphs (a) and (b) of this section; and

(d) A handler may account for the receipts, utilization and classification of milk and filled milk, at his plant, for periods within a month if he notifies the market administrator in writing of his intention to use such accounting period not later than the end of every accounting period.

[37 FR 17739, Aug. 30, 1972, as amended at 41 FR 43159, Sept. 30, 1976; 46 FR 51235, Oct. 19, 1981]

§ 1013.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for purposes of allocating receipts from other order plants pursuant to § 1013.44(a)(10) and the corresponding step of § 1013.44(b), the market administrator shall estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1013.44 on the basis of such report, and thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month, report to each cooperative association which so requests the percentage of producer milk delivered by members of such association which was used in each class by each handler receiving such milk. For the purpose of this report, the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handler.

[37 FR 17739, Aug. 30, 1972, as amended at 41 FR 43159, Sept. 30, 1976]

CLASS PRICES

§ 1013.50 Class prices.

Subject to the provisions of § 1013.52, the class prices for the month per hundredweight of milk shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $3.15, and plus $0.20 for the months of September 1984 through February 1985.

(b) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price computed pursuant to § 1013.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, except that in no event shall the final Class II price be less than the basic formula price: *Provided,* That for the first month this paragraph is effective the Class II price shall be the basic formula price for the month plus 15 cents.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1013.51 and add 15 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1013.51a.

(c) *Class III price.* The Class III price shall be computed as follows: Multiply the Chicago butter price described in § 1013.51 by 1.25, add 4 cents and multiply the result by 3.5.

[37 FR 17739, Aug. 30, 1972, as amended at 42 FR 46915, Sept. 19, 1977; 47 FR 42967, Sept. 30, 1982; 49 FR 34802, Sept. 4, 1984]

§ 1013.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1013.51a Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1013.51 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1013.19 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following subparagraphs is of the total of the data represented in paragraphs (c) (1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Statistical Reporting Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Statistical Reporting Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

[47 FR 42967, Sept. 30, 1982]

§ 1013.52 Plant location adjustments for handlers.

(a) The Class I price for producer milk and other source milk at a plant located outside the State of Florida or within the State of Florida but outside of the defined marketing area shall be adjusted at the rates set forth in the following schedule: *Provided*, That the resulting adjusted price for fluid milk products transferred from a pool plant to a plant regulated under another Federal order shall not be less than the Class I price under such other Federal order that is applicable at the location of the transferor plant:

Location of plant	Rate per cwt.
Outside the State of Florida:	
For each 10 miles or fraction thereof from the U.S. Post Office in West Palm Beach, Fla.	Subtract 1.5 cents.
Inside the State of Florida:	
South of a line forming the southern boundary of the counties of Alachua, Dixie, Gilchrist, Putnam, and St. Johns, but outside the defined marketing area of this order.	Subtract 20 cents.
North of a line forming the southern boundary of the counties of Alachua, Dixie, Gilchrist, Putnam, and St. Johns.	Subtract 30 cents.

(b) For the purpose of calculating location adjustments, receipts of fluid milk products from pool plants shall be assigned any remainder of Class I milk at the transferee plant that is in excess of the sum of producer milk receipts at such plant and that assigned as Class I to receipts from other order plants and unregulated supply plants. Such assignment shall be made in sequence according to the location adjustment applicable at each plant, beginning with the plant nearest the U.S. Post Office in West Palm Beach.

[37 FR 17739, Aug. 30, 1972, as amended at 48 FR 29673, June 28, 1983]

§ 1013.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and the final Class II price for the preceding month, except that the Class II price announced for the first month during which this section is effective shall be the price specified in the proviso in § 1013.50(b); and on or before the 15th day of each month the tentative Class II price for the following month.

[47 FR 42967, Sept. 30, 1982]

§ 1013.54 Equivalent price.

If, for any reason, a price quotation required by this order for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price which is required.

UNIFORM PRICE

§ 1013.60 Handler's value of milk for computing uniform price.

The net pool obligation of each handler described in § 1013.9 (a), (b), and (c), during each month shall be a sum of money computed by the market administrator as follows:

(a) Multiply the quantity of producer milk in each class, as computed pursuant to § 1013.44(c), by the applicable class price;

(b) Add the amount obtained from multiplying the pounds of overage deducted from each class pursuant to § 1013.44(a)(12) and the corresponding step of § 1013.44(b) by the applicable class prices, as adjusted by the butterfat differential specified in § 1013.74;

(c) Add the amount obtained from multiplying the difference between the Class II price for the preceding accounting period and the Class I price for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1013.44(a)(7) and the corresponding step of § 1013.44(b);

(d) Add an amount determined by multiplying the difference between the Class I price for the preceding month and Class I price for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1013.44(a)(5) and the corresponding step of § 1013.44(b). If the Class I price for the current month is less than the Class I price for the preceding month, the result would be a minus amount;

(e) Add an amount equal to the difference between the Class I and Class II price values at the pool plant of the skim milk and butterfat (excluding that contained in receipts of bulk fluid cream products from an other order plant) subtracted from Class I pursuant to § 1013.44(a) (3) and (4) and the corresponding step of § 1013.44(b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1013.44(a)(4) (iii) and (iv) and the corresponding step of § 1013.44(b) the Class I price shall be adjusted to the location of the transferor-plant (but not to be less than the Class II price);

(f) Add the value at the Class I price adjusted for location of the nearest nonpool plant(s) from which an equivalent volume was received (but not to be less than the Class II price), of the skim milk and butterfat subtracted from Class I pursuant to § 1013.44(a)(9) and the corresponding step of § 1013.44(b), excluding such skim milk or butterfat in bulk receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by pool handlers defined in any order issued pursuant to the Act is classified and priced as Class I milk at plant of origin and is not used as an offset on any other payment obligation pursuant to any other order.

(g) For the first month that this paragraph is effective, subtract the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class II price, both for the preceding month, by the hundredweight of skim milk and butterfat in any fluid cream product that was in the handler's inventory at the end of the preceding month and classified as Class I milk.

(h) With respect to milk marketed on and after the effective date hereof, through February 1985, subtract the amount obtained by multiplying the pounds of bulk fluid milk products that were transferred to the handler's pool plant from another order plant and allocated to Class I milk, by a rate equal to 3.3 cents per hundredweight for each 10 miles or fraction thereof, less any difference (positive only) between the Class I differential applicable at the receiving plant less the Class I differential applicable at the shipping plant.

[37 FR 17739, Aug. 30, 1972, as amended at 41 FR 43159, Sept. 30, 1976; 42 FR 46915, Sept. 19, 1977; 49 FR 34802, Sept. 4, 1984]

§ 1013.61 Computation of uniform price.

For each month the market administrator shall compute a uniform price for milk of 3.5 percent butterfat as follows:

(a) Combine into one total the values computed pursuant to § 1013.60 for all handlers who filed the reports prescribed by § 1013.30 for the month and who made the payments pursuant to § 1013.71 for the preceding month;

(b) [Reserved]

(c) Add an amount equal to the total value of the location adjustments computed pursuant to § 1013.75;

(d) Add an amount equal to one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1013.60(f); and

(f) Subtract not less than 4 cents nor more than 5 cents per hundredweight.

[37 FR 17739, Aug. 30, 1972, as amended at 42 FR 46915, Sept. 19, 1977]

§ 1013.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 11th day after the end of each month the uniform price for such month.

[42 FR 46915, Sept. 19, 1977]

PAYMENTS FOR MILK

§ 1013.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1013.71, 1013.76, and 1013.77 and out of which he shall make all payments pursuant to §§ 1013.72 and 1013.77: *Provided*, That any payments due to any handler shall be offset by any payments due from such handler.

§ 1013.71 Payments to the producer-settlement fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the total amounts specified in paragraph (a)(1) of this section exceed the amounts specified in paragraph (a)(2) of this section: *Provided*, That the requirement as to date of payment pursuant to this section shall be considered to have been met if the payment is made by mail postmarked not later than the required payment date:

(1) The net pool obligation computed pursuant to § 1013.60 for such handler; and

(2) The sum of:

(i) The value of each handler's producer milk at the uniform price, as adjusted pursuant to § 1013.75; and

(ii) The value at the uniform price applicable at the location of the plant(s) from which received (not to be less than the value at the Class II price) of other source milk for which a value is computed pursuant to § 1013.60(f).

(b) Each handler operating a plant specified in § 1013.7(c)(4), if such plant is subject to the classification and pricing provisions of another order which provides for individual-handler pooling, shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of as route disposition in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant as route disposition in marketing areas regulated by two or more market pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area; and

(2) Compute the value of the quantity of reconstituted skim milk assigned in paragraph (b)(1) of this section to Class I disposition in this marketing area at the Class I price under this part applicable at the location of the other order plant (not to be less than the Class II price), and subtract its value at the Class II price.

[37 FR 17739, Aug. 30, 1972, as amended at 42 FR 46915, Sept. 19, 1977]

§ 1013.72 Payments from the producer-settlement fund.

On or before the 13th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1013.71(a)(2) exceeds the amount computed pursuant to § 1013.71(a)(1). If, at such time the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the funds are available.

§ 1013.73 Payments to producers and to cooperative associations.

(a) Except as provided in paragraph (b) of this section, each handler shall make payment to each producer from whom milk is received as follows:

(1) On or before the 20th day of each month to each producer who did not discontinue shipping milk to such handler before the 15th day of the month, an amount equal to not less than the uniform price for the preceding month less 10 percent, but not to exceed $6, multiplied by the hundredweight of milk received from such producer during the first 15 days of the month, less proper deductions authorized by such producer to be made from payments due pursuant to this paragraph;

(2) On or before the fifth day of the following month to each producer who did not discontinue shipping milk to such handler before the last day of the month, an amount equal to not less than the uniform price for the preceding month less 10 percent, but not to exceed $6, multiplied by the hundredweight of milk received from such producer after the 15th and through the last day of the month, less proper deductions authorized by such producer to be made from payments due pursuant to this paragraph; and

(3) On or before the 15th day of the following month, to each producer an amount equal to not less than the uniform price computed pursuant to § 1013.61 adjusted pursuant to §§ 1013.74 and 1013.75, multiplied by

the total pounds of milk received from such producer, subject to the following adjustments:

(i) Less payments made to such producer pursuant to paragraphs (a) (1) and (2) of this section;

(ii) Less marketing service deductions made pursuant to § 1013.86;

(iii) Plus or minus adjustments for errors made in previous payments made to such producer; and

(iv) Less proper deductions authorized by such producer: *Provided*, That if by the date specified, such handler has not received full payment from the market administrator pursuant to § 1013.72 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment and payments to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after receipt of the balance due from the market administrator;

(b) Upon receipt of a written request from a cooperative association which the Secretary determines is authorized by its members to collect payment for their milk and receipt of a written promise to reimburse the handler the amount of any actual loss incurred by him because of any improper claim on the part of the association, each handler shall on or before the second day prior to each date on which payments are due individual producers, pay the cooperative association for milk received from the producer-members of such association as determined by the market administrator during the period for which payment is made, an amount equal to not less than the total due such producer-members as determined pursuant to paragraph (a) of this section; and

(c) Each handler who received milk from producers for which payment is to be made to a cooperative association pursuant to paragraph (b) of this section shall report to such cooperative association or to the market administrator for transmittal to such cooperative association for each such producer as follows:

(1) On or before the 25th day of the month, the total pounds of milk received during the first 15 days of the month; and

(2) On or before the 10th day of the following month: (i) The total pounds of milk received during the month, (ii) the pounds of milk received each day, together with the butterfat content of such milk, (iii) the amount or rate and nature of any authorized deductions to be made from payments, and (iv) the amount and nature of payments due pursuant to § 1013.77.

[37 FR 17739, Aug. 30, 1972, as amended at 42 FR 46915, Sept. 19, 1977]

§ 1013.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A bulk butter per pound at Chicago, as reported by the Department for the month.

[42 FR 46915, Sept. 19, 1977]

§ 1013.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price for producer milk received at a pool plant shall be reduced according to the location of the pool plant at the rates set forth in § 1013.52; and

(b) For purposes of computations pursuant to §§ 1013.71 and 1013.72, the uniform price shall be adjusted at the rates set forth in § 1013.52 applicable at the location of the nonpool plant from which the milk was received.

§ 1013.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month either of the amounts (at the handler's election) calculated pursuant to paragraph (a) or (b) of this section. If the handler fails to report pursuant to §§ 1013.30 and 1013.31(b) the information necessary to compute the amount specified in paragraph (a) of this section, he shall pay the amount computed pursuant to paragraph (b) of this section:

(a) An amount computed as follows:

(1) The obligation that would have been computed pursuant to § 1013.60 at such plant shall be determined as though such plant were a pool plant, subject to the following modifications:

(i) Receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant;

(ii) Transfers from such nonpool plant to a pool plant or an other order plant shall be classified in the class to which allocated at the pool plant or other order plant. Class I milk transferred from such nonpool plant to pool plants and other order plants shall be valued at the uniform price of the respective order, except that reconstituted skim milk (including that in filled milk), and milk or skim milk from producer-handlers and exempt plants defined in any order shall be valued at the Class II price. No obligation shall apply to Class I milk transferred to a pool plant or an other order plant if such Class I utilization is assigned to receipts at the partially regulated distributing plant from pool plants and other order plants at which such milk was classified and priced as Class I milk;

(iii) Such handler's obligation shall include any charges computed pursuant to § 1013.60(f) and any credits computed pursuant to § 1013.71(a)(2)(ii) with respect to receipts of Class I milk from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk (including that in filled milk), and milk or skim milk from producer-handlers and exempt plants defined in any order shall be at the Class II price, unless an obligation with respect to such plant is computed as specified in paragraph (a)(1)(iv) of this section;

(iv) If the operator of the partially regulated distributing plant so requests, and provides with his reports pursuant to §§ 1013.30 and 1013.31(b) similar reports for each nonpool plant which serves as a supply plant for such partially regulated distributing plant by shipments to such plant during the month equivalent to the requirements of § 1013.7(b) with agreement of the operator of such plant that the market administrator may examine the books and records of such plant for purposes of verification of such reports, there will be added the amount of the obligation computed at such nonpool supply plant in the same manner and subject to the same conditions as for the partially regulated distributing plant;

(2) From this obligation, there will be deducted the sum of:

(i) The gross payments made by such handler, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1013.74, for Grade A milk received during the month from dairy farmers at such plant and like payments made by the operator of a supply plant(s) included in the computations pursuant to paragraph (a)(1) of this section; and

(ii) Payments to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant.

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as route disposition in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received at the partially regulated distributing plant as follows:

(i) Any Class I milk from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act; and

(ii) Receipts from a nonpool plant that is not an other order plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such nonpool plant by handlers fully regulated under any order issued pursuant to the Act is classified and priced as Class I milk and is not used as an offset on any other payment obligation pursuant to any other order;

(3) Deduct from any remainder the quantity of reconstituted skim milk, and milk or skim milk contained in receipts from producer-handlers and exempt plants defined in any other

order disposed of as route disposition in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total; and

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the uniform price applicable at such location, and add for the quantity of milk deducted pursuant to the paragraph (b)(3) of this section its value computed at the Class I price applicable at the location of the nonpool plant less the value of such milk at the Class II price. For purposes of this paragraph, the prices shall not be adjusted to less than the Class II price.

[37 FR 17739, Aug. 30, 1972, as amended at 42 FR 46915, Sept. 19, 1977]

§ 1013.77 Adjustment of accounts.

Whenever audit by the market administrator of any reports, books, records, or accounts or other verification discloses errors resulting in moneys due (a) the market administrator from a handler, (b) a handler from the market administrator, or (c) any producer or cooperative association from a handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred.

§ 1013.78 Charges on overdue accounts.

The unpaid obligation of a handler pursuant to § 1013.71 shall be increased by one-half of 1 percent for each month or portion thereof that such payment is overdue.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1013.85 Assessment for order administration.

(a) As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to:

(1) Producer milk (including such handler's own production);

(2) Any other source milk allocated to Class I milk pursuant to § 1013.44(a)(3), (4), and (9) and the corresponding steps of § 1013.44(b), except such other source milk excluded from pool obligations pursuant to § 1013.60 (e) and (f); and

(3) Class I milk disposed of in the marketing area from a partially regulated distributing plant that exceeds the hundredweight of Class I milk:

(i) Received during the month at such plant from pool plants and other order plants that is not used as an offset under a similar provision of another order issued pursuant to the Act; and

(ii) Specified in § 1013.76(b)(2)(ii).

(b) With respect to payments pursuant to paragraph (a) of this section, if a handler uses more than one accounting period in a month, the rate of payment per hundredweight for such handler shall be the rate for monthly accounting periods multiplied by the number of accounting periods in the month, or such lesser rate as the Secretary may determine is demonstrated as appropriate in terms of the particular costs of administering the additional accounting periods.

[37 FR 17739, Aug. 30, 1972, as amended at 41 FR 43159, Sept. 30, 1976]

§ 1013.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers for milk pursuant to § 1013.73, shall deduct 4 cents per hundredweight, or such lesser amount as may be prescribed by the Secretary and shall pay such deductions to the market administrator on or before the 15th day after the end of the month. Such money shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such services from a cooperative association pursuant to paragraph (b) of this section; and

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall (in lieu of the deduction specified in paragraph (a) of this section) make such deductions from the payments to be made to producers as may be authorized by the membership agreement or marketing contract between the cooperative association and its members. On or before the 15th day after the end of each month, the handler shall pay the aggregate amount of such deductions to the cooperative association, furnishing a statement showing the amount of the deductions and the quantity of milk on which the deduction was computed for each producer.

PART 1030—MILK IN CHICAGO REGIONAL MARKETING AREA

Subpart—Order Regulating Handling

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1030.85 Assessment for order administration.
1030.86 Deduction for marketing services.

AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended (7 U.S.C. 601-674).

SOURCE: 39 FR 15405, May 3, 1974, unless otherwise noted.

Subpart—Order Regulating Handling

GENERAL PROVISIONS

§ 1030.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1030.2 Chicago Regional marketing area.

"Chicago Regional marketing area," hereinafter called the "marketing area," means the territory within the boundaries of the following places, including piers, docks, and wharves and territory wholly or partly within such boundaries occupied by government (municipal, State, or Federal) reservations, installations, institutions or other similar establishments:

(a) In the State of Illinois:

(1) The counties of:

Boone, Carroll, Cook, De Kalb, Du Page, Jo Daviess (except the city of East Dubuque), Kane, Kendall, Lake, Lee, McHenry, Ogle, Stephenson, Will, Winnebago.

(2) In Whiteside County:

(i) The townships of:

Caloma, Hahnaman, Hopkins, Hume, Jordan, Montmorency, Sterling, Tampico.

(b) In the State of Wisconsin:

(1) The counties of:

Adams, Brown, Calumet, Columbia, Crawford, Dane, Dodge, Fond du Lac, Forest, Grant, Green, Green Lake, Iowa, Jefferson, Juneau, Kenosha, Kewaunee, La Crosse, Lafayette, Langlade, Lincoln, Manitowoc, Marquette, Menominee, Milwaukee, Monroe, Oconto, Oneida, Outagamie, Ozaukee, Portage, Racine, Richland, Rock, Sauk, Shawano, Sheboygan, Vernon, Vilas, Walworth, Washington, Waukesha, Waupaca, Waushara, Winnebago.

(2) In Door County, the city of Sturgeon Bay;

(3) In Marathon County:

(i) The towns of:

Bergen, Berlin, Bevent, Easton, Elderon, Franzen, Guenther, Harrison, Hewitt, Knowlton, Kronenwetter, Maine, Marathon, Mosinee, Norrie, Plover, Reid, Rib Mountain, Ringle, Stettin, Texas, Wausau, Weston.

(ii) The villages of:

Brokaw, Elderon, Hatley, Marathon, Rothschild.

(iii) The cities of:

Mosinee, Schofield, Wausau.

(4) In Wood County:

(i) The towns of:

Cranmoor, Grand Rapids, Port Edwards, Rudolph, Saratoga, Seneca.

(ii) The villages of:

Biron, Port Edwards.

(iii) The cities of:

Nekoosa, Wisconsin Rapids.

§ 1030.3 Route disposition.

"Route disposition" means a delivery (including disposition from a retail plant store) of any fluid milk product classified as Class I milk to a retail or wholesale outlet other than a milk plant. Disposition of a plant through a vendor or through a distribution point shall be considered a route delivery at the location of the wholesale or retail outlet to which delivery is made.

§ 1030.4 Plant.

"Plant" means a building together with its facilities and equipment, whether owned or operated by one or more persons, constituting a single operating unit or establishment: (a) That has facilities adequate for cleaning tank trucks, is approved by an appropriate health authority, and at which milk moved from the farm is transferred and commingled in another tank truck with other milk and is transshipped in such other tank truck to another plant, (b) at which milk is received from dairy farmers, or (c) at which milk is processed and packaged or manufactured.

[42 FR 38580, July 29, 1977]

§ 1030.5 Distributing plant.

"Distributing plant" means a plant from which there is route disposition in the marketing area, either directly or through another plant, of a Grade A fluid milk product that is processed or packaged in such plant during the month.

§ 1030.6 Supply plant and reserve supply plant.

Except as provided in paragraph (c) of this section, "supply plant" and "reserve supply plant" are defined as follows:

(a) "Supply plant" means a plant from which a Grade A fluid milk product is shipped or transshipped during the month to another plant. Such supply plant shall be equipped with storage capacity sufficient to hold the largest quantity of fluid milk product either received in the plant or shipped from the plant as a single load during the month, except that no storage capacity shall be maintained in a plant described in § 1030.4(a).

(b) "Reserve supply plant" means a plant that is located in the marketing area or in that protion of the State of Wisconsin that is not included in the marketing area of any federal milk marketing order. This definition shall include any plant located in the Wisconsin portion of the Upper Midwest federal milk order marketing area that was a pool plant for at least three consecutive months immediately preceeding the effective date of this paragraph so long as it continues to maintain pool status.

(c) Any plant located on the premises of a pool distributing plant pursuant to § 1030.7(a) shall not be considered a supply plant or a reserve supply plant unless it is located in a building that is entirely separate from the distributing plant.

[49 FR 32338, Aug. 14, 1984]

§ 1030.7 Pool plant.

Except as provided in paragraphs (d) and (f) of this section, "pool plant" means:

(a) A distributing plant or unit described in paragraph (a)(4) of this section from which during the month the disposition of fluid milk products specified in paragraph (a)(2) of this section is not less than 10 percent of the receipts specified in paragraph (a)(1) of this section and from which the disposition of fluid milk products specified in paragraph (a)(3) of this section as a percent of the receipts specified in paragraph (a)(1) of this section is not less than 45 percent in each of the months of September, October, November, and December, 35 percent in each of the months of January, February, March, and August, and 30 percent in all other months.

(1) The total Grade A fluid milk products, except filled milk, received during the month at such plant, including producer milk diverted to nonpool plants and to pool supply plants and pool reserve supply plants pursuant to § 1030.13, but excluding producer milk diverted to other pool distributing plants, receipts of fluid milk products in exempt milk, packaged fluid milk products and bulk fluid milk products by agreement for Class II and Class III uses from other pool distributing plants, and receipts from other order plants and unregulated supply plants which are assigned pursuant to § 1030.44(a)(8) (i)(*a*) and (ii) and the corresponding step of § 1030.44(b).

(2) Packaged fluid milk products, except filled milk, disposed of as either route disposition in the marketing area or moved to other plants from which it is disposed of as route disposition in the marketing area. Such disposition is to be exclusive of receipts of packaged fluid milk products from other pool distributing plants.

(3) Packaged fluid milk products, except filled milk, disposed of as either route disposition or moved to other plants. Such disposition is to be exclusive of receipts of packaged fluid milk products from other pool distributing plants.

(4) A unit consisting of at least one distributing plant and one or more additional plants of a handler at which milk is processed and packaged or manufactured shall be considered as one plant for the purpose of meeting the requirements of this paragraph if all such plants are located within the State of Wisconsin or that portion of the marketing area within the State of Illinois, and if, prior to the first day of the month, the handler operating such plants has filed a written request for such plants to be considered a unit with the market administrator.

(b) A supply plant from which the quantity of fluid milk products (except filled milk) and condensed skim milk shipped or transshipped and received and physically unloaded into plants described in paragraph (d) of this section as a percent of the Grade A milk received at the plant from dairy farmers (except dairy farmers described in § 1030.12(b)) and handlers described in § 1030.9(c), including producer milk diverted pursuant to § 1030.13, but excluding packaged fluid milk products that are disposed of from such plant as route disposition, is not less than the marketwide Class I utilization percentage for the same month of the preceding year, subject to the conditions set forth in paragraph (d) of this section.

(c) A reserve supply plant, subject to the following conditions:

(1) At least 47,000 pounds of Grade A milk from producers are received and physically unloaded into the plant at least one day each month. To be a pool plant for December each year, each reserve supply plant must ship during any month of September through December of the same year, at least one tank truck load (not less than 47,000 pounds) of Grade A fluid milk products to a pool distributing plant pursuant to paragraphs (a) or (e) of this section;

(2) The operator of the plant has filed a request with the market administrator for pool plant status at least 15 days prior to the first day of the month in which such status is desired to be effective. Upon becoming qualified as a pool plant pursuant to this paragraph, such status shall continue to be effective through the third month following the month in which the operator notifies the market administrator that the plant will seek qualification as a pool plant pursuant to paragraph (b) of this section for the next consecutive three months, unless the operator requests nonpool status for the plant prior to the first day of the month for which nonpool status is requested, the plant subsequently fails to meet all the conditions of this paragraph, or the plant qualifies as a pool plant under another order.

(3) Subject to the conditions set forth in paragraph (d) of this section, the operator of the reserve supply plant supplies fluid milk products (except filled milk) and/or condensed skim milk to plants described in § 1030.7(d)(1) or supplies fluid milk products (except filled milk) to plants described in paragraphs (d)(2), (d)(3), and (d)(4) of this section that are located within an area(s) designated by the market administrator as the "call area" in compliance with any announcement by the market administrator requesting a minimum level(s) of shipments, as further provided below:

(i) The market administrator may require such supplies of milk products from operator(s) of any pool reserve supply plant(s) within the call area whenever he finds that milk supplies for Class I use at one or more pool distributing plants within the call area are needed from one or more plants qualifying under this paragraph. Such requirement(s) shall be expressed as a percent of the Grade A milk received at the plant from dairy farmers (except dairy farmers described in § 1030.12(b)) and handlers described in § 1030.9(c), including producer milk diverted pursuant to § 1030.13, but excluding packaged fluid milk products that are disposed of from such plant(s) as route disposition, but such percent shall not exceed twice the percentage shipping requirement for a pool plant pursuant to paragraph (b) of this section. Before making such a finding, the market administrator shall investigate the need for such shipments either on his own initiative or at the request of interested persons. If his investigation shows that such shipments might be appropriate, he shall issue a notice stating that a shipping announcement is being considered and inviting data, views, and arguments with respect to the proposed shipping announcement; and

(ii) Failure of a handler to comply with any announced shipping requirement, including making any significant change in his marketing operations that the market administrator determines has the impact of forcing or evading such an announcement, shall result in immediate loss of pool status for the plant pursuant to this paragraph. Such loss of pool status shall also apply to any other reserve supply plant that the market administrator determines was utilized by any handler to aid or abet the forcing or evading of such announcement. A plant losing pool status in this manner or a plant that requests nonpool status, or that elects to qualify as a pool supply plant for three consecutive months and fails to so qualify during any of such months, may not again qualify as a pool plant pursuant to this paragraph for a period of one year from the date on which pool status was last held.

(4) To be a pool plant under this paragraph during April through August, a plant must meet the following conditions:

(i) The plant must have been a pool plant under this order during each of the preceding months of September through March; or

(ii) The plant must have been a pool plant under this order during any six months of the preceding September through March and an other order plant during one such month, except that this provision shall not apply during the first three months that a plant has changed status from a pool reserve supply plant to a pool supply plant.

(d) Qualifying shipments pursuant to the requirements of paragraph (b) of this section and pursuant to any notice issued under paragraph (c)(3)(i) of this section may be made to the following plants, except that shipments from a reserve supply plant to plants described in paragraphs (d)(1), (d)(2), (d)(3), or (d)(4) of this section that are outside the call area may count as if delivered to a pool distributing plant within the call area if the market administrator is notified of the amount of any such commitments to ship milk prior to such notice:

(1) Pool plants described in paragraph (a) of this section, subject to the following conditions:

(i) The quantity of condensed skim milk and fluid milk products moved (including milk diverted) from supply plants and reserve supply plants to each distributing plant that is a pool plant pursuant to paragraphs (a) or (e) of this section that shall count towards meeting the shipping requirements of this paragraph shall be a net quantity assignable at each such pool plant pro rata to supply plants and reserve supply plants in accordance with total receipts from such plants. The net quantity shall be computed by subtracting from the quantity of fluid milk products and condensed skim milk received from supply plants and reserve supply plants the following:

(*a*) The quantity of condensed skim milk not disposed of in a fluid milk product and the quantity of fluid milk products in the form of bulk milk and skim milk moved from the pool distributing plant to pool supply plants and/or pool reserve supply plants plus any such bulk shipments to nonpool plants as Class II or Class III milk other than:

(*1*) Transfers or diversions classified pursuant to § 1030.40(b)(3); and

(*2*) Transfers or diversions on New Year's Day, Memorial Day, July 4, Labor Day, Thanksgiving, Christmas, and on any Saturday if no milk is received at the pool distributing plant from a supply plant or reserve supply plant, in an amount not in excess of 120 percent of the average daily receipts of producer milk pursuant to § 1030.13(a) at the plant during the prior month, less the quantity of producer milk diverted pursuant to § 1030.13(d) on such day. If no producer milk was received in the distributing plant during the prior month, the average daily receipts during the current month shall be used for this purpose; and

(*b*) If milk is diverted from the pool distributing plant on the date of the receipts from the supply plant or the reserve supply plant, the quantity so diverted, except any diversion of milk (not to exceed 3 days' production of any individual producer) made because of any emergency situation such as a breakdown of trucking equipment or hazardous road conditions if such emergency is reported to the market administrator.

(ii) Qualifying shipments from reserve supply plants to pool distributing plants within the call area may originate from any plant or producer milk supplies of the handler. The computation of location adjustments pursuant to § 1030.52(c) (8), (9), and (10) shall be based on the location of the plant subject to the call or the location of the plant(s) from which shipments are actually made in compliance with the call, whichever results in the lesser location adjustment on such shipments;

(iii) Shipments from sources other than the reserve supply plant(s) subject to the call and milk supplies for which a cooperative association is the handler pursuant to § 1030.9(c) must be in addition to any shipments already being made by the handler and may not result from shifting milk supplies from a pool distributing plant outside the call area to one within the call area; and

(iv) The operator of a supply plant or a reserve supply plant may include as qualifying shipments deliveries to pool distributing plants directly from farms of producers pursuant to § 1030.13(d).

(2) Plants of producer-handlers;

(3) Partially regulated distributing plants, except that credit for such shipments shall be limited to the amount of milk which receives a Class I classification at the transferee plant; and

(4) Distributing plants fully regulated under other Federal orders, except that credit for such shipments from such plant shall be limited to the quantity of milk shipped to pool distributing plants during the month. Credits for shipments to other order plants shall not include any such shipments made on the basis of agreed-upon Class II or Class III utilization.

(e) Any plant that qualifies as a pool plant in each of the immediately preceding three months pursuant to paragraph (a) of this section or the shipping percentages in paragraph (b) or (c) of this section that is unable to meet such performance standards because of unavoidable circumstances determined by the market administrator to be beyond the control of the handler operating the plant, such as a natural disaster (ice storm, wind storm, flood), fire, breakdown of equipment, or work stoppage, shall be considered to have met the minimum performance standards during the period of such unavoidable circumstances, but such relief shall not be granted for more than two consecutive months.

(f) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant or exempt distributing plant;

(2) A plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act, unless it is qualified as a pool plant pursuant to paragraph (a), (b), (c), or (e) of this section and a greater volume of fliud milk products, except filled milk, is disposed of from such plant in this marketing area as route disposition and to pool plants qualified on the basis of route disposition in this marketing area than is so disposed of in the marketing area regulated pursuant to such other order; and

(3) That portion of a plant that is physically separated from the Grade A portion of such plant, and is not approved by any regulatory agency for the receiving, processing, or packaging of any fluid milk product for Grade A disposition.

[49 FR 32338, Aug. 14, 1984; 49 FR 33204, Aug. 22, 1984]

§ 1030.8 Nonpool plant.

"Nonpool plant" means a plant (except a pool plant) which receives milk from dairy farmers or is a milk or filled milk manufacturing, processing or bottling plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is not an other order plant, a producer-handler plant, or an exempt distributing plant and from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant that is not an other order plant, a producer-handler plant, or an exempt distributing plant from which fluid milk products are shipped during the month to a pool plant.

(e) "Exempt distributing plant" means a distributing plant operated by a governmental agency.

§ 1030.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) Any cooperative association with respect to producer milk which it causes to be diverted from a pool plant of another handler pursuant to

§ 1030.13 for the account of such cooperative association;

(c) Any cooperative association with respect to milk of its producers which is received from the farm for delivery to the pool plant of another handler in a tank truck owned and operated by or under contract to such cooperative association;

(d) Any person in his capacity as the operator of a partially regulated distributing plant;

(e) A producer-handler;

(f) Any person in his capacity as the operator of an other order plant that is either a distributing plant or a supply plant; or

(g) Any person in his capacity as a broker negotiating a purchase or sale of fluid milk products or fluid cream products from or to a person described in paragraph (a) or (d) of this section.

[39 FR 15405, May 3, 1974, as amended at 42 FR 38582, July 29, 1977]

§ 1030.10 Producer-handler.

"Producer-handler" means any person who operates a dairy farm and a distributing plant and who has route disposition in the marketing area of only fluid milk products of such person's own production or fluid milk products received from pool plants: *Provided*, That such person provides proof satisfactory to the market administrator that the care and management of all dairy animals and other resources necessary to produce the entire volume of fluid milk products handled (excluding receipts from pool plants) and the operation of the processing and packaging business are the personal enterprise and risk of such person.

§ 1030.11 [Reserved]

§ 1030.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority and whose milk is received at a pool plant or diverted pursuant to § 1030.13.

(b) "Producer" shall not include:

(1) A dairy farmer who is a government and has nonproducer status for the month pursuant to § 1030.19;

(2) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(3) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1030.44(a)(8)(ii) and the corresponding step of § 1030.44(b);

(4) Any person with respect to milk produced by him which is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order; and

(5) A dairy farmer with respect to milk produced by him that is received at a handler's pool plant during the months of January through July if any milk from the same farm operated by such dairy farmer was a receipt of producer milk in any "payback" month during the preceding year under another order that provided for a seasonal incentive payment plan whereby funds previously withheld in the computation of the uniform price to producers were paid back to producers through the uniform price computation in subsequent months of the year.

[39 FR 15405, May 3, 1974, as amended at 42 FR 38582, July 29, 1977]

§ 1030.13 Producer milk.

"Producer milk" means the skim milk and butterfat in milk of a producer that is:

(a) Received at a pool plant directly from producers by being physically unloaded into processing facilities, a storage tank, or, in the case of a reload facility, another tank truck, as further provided below:

(1) Any shrinkage of milk received from producers' farms which was not unloaded in a pool plant shall also be producer milk under this paragraph; and

(2) In the event that part of a load of milk is first received at another plant(s) and the remaining part is

then unloaded in the pool plant, the quantity of milk so received at each such plant shall be prorated over the total quantity of milk picked up at each producer's farm.

(b) Received at a pool plant from a handler described in § 1030.9(c).

(c) Received by a handler described in § 1030.9(c) to the extent of the shrinkage of skim milk and butterfat received from producers' farms which was not received in a pool plant pursuant to paragraph (b) of this section. In applying §§ 1030.52 and 1030.75, such skim milk and butterfat shall be deemed to have been received at the location of the pool plant to which delivery is normally made.

(d) Diverted by the operator of a pool plant, or by a handler described in § 1030.9(b), to another pool plant or to a nonpool plant (that is not a producer-handler plant), subject to the following conditions:

(1) Milk from a dairy farmer shall not be eligible for diversion unless at least one day's production is received and physically unloaded during the month at the pool plant where such milk is reported as producer milk;

(2) Milk from a dairy farmer who was not a producer during the previous month shall not be eligible for diversion until at least one day's production is received and physically unloaded at the pool plant where such milk is reported as producer milk;

(3) Milk diverted to a nonpool plant(s) for the account of the operator of a pool plant, or a handler described in § 1030.9(b), shall not exceed the market's combined Class II and Class III utilization percentage for the same month of the preceding year of the total quantity of producer milk for which it is the handler (or, in the case of a cooperative the producer milk that the cooperative association causes to be delivered to or diverted from pool plants), except that the percentage specified herein shall not apply to the operator of a pool reserve supply plant during the months of April through August;

(4) The quantity of each producer's milk to be considered as diverted milk when a portion of a tank load of milk, picked up at the farms of two or more producers, is unloaded at another plant, shall be determined by prorating the total quantity unloaded at such other plant over the total quantity of milk picked up at each producer's farm;

(5) To the extent that milk diverted by a cooperative association as a handler described in § 1030.9(b) during any month would result in a plant failing to qualify as a pool plant under § 1030.7, such diverted milk shall not be producer milk;

(6) Any milk diverted in excess of the limits prescribed in paragraph (d)(3) of this section shall not be producer milk. The diverting handler may designate the dairy farmers whose diverted milk will not be producer milk. Otherwise, the milk last diverted—in lots of an entire day's production—shall be excluded first in determining which dairy farmer's milk should not be producer milk; and

(7) Diverted milk shall be priced at the location of the plant to which diverted, except that, in the case of a distributing plant, if during the month not more than 4 days' production of a producer is diverted from such plant or if the diverted milk is part of a tank truck load of milk that exceeds the milk storage capacity of such distributing plant, such milk shall be priced at the location of the plant from which diverted.

[42 FR 38582, July 29, 1977, as amended at 49 FR 32340, Aug. 14, 1984; 49 FR 33205, Aug. 22, 1984]

§ 1030.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1030.40(b)(1) from any source other than producers, handlers described in § 1030.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1030.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1030.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1030.40(b)(1)) for which the handler fails to establish a disposition.

§ 1030.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section "fluid milk product" means any of the following products in fluid or frozen form: Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

[39 FR 15405, May 3, 1974, as amended at 40 FR 31942, July 30, 1975]

§ 1030.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1030.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1030.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines after application by the association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and is engaged in making collective sales of or marketing milk or milk products for its members.

§ 1030.19 Exempt milk.

"Exempt milk" means milk received at a pool plant in bulk from the dairy farmer who produced it, to the extent of the quantity of any packaged fluid milk products returned to the dairy farmer if:

(a) The dairy farmer is a government which is not engaged in the route disposition of any of the returned products; and

(b) The dairy farmer has, by written notice to the market administrator and the receiving handler, elected nonproducer status for a period of not less than 12 months beginning with the month in which the election was made and continuing for each subsequent month until canceled in writing, and the election is in effect for the current month.

§ 1030.20 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1030.51a:

(a) *Butter price.* "Butter price" means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) *Cheddar cheese price.* "Cheddar cheese price" means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) *Nonfat dry milk price.* "Nonfat dry milk price" means the simple average, for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Division as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding work-day until the day such prices were previously reported. A work-day is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price.* "Edible whey price" means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

[46 FR 43376, Aug. 28, 1981]

HANDLER REPORTS

§ 1030.30 Reports of receipts and utilization.

On or before the 10th day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants (except that if a handler so requests and the request is approved by the market administrator, a single report for supply plants and/or reserve supply plants and a single report for distributing plants may be filed), shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1030.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from pool plants of other handlers (or other pool plants, as applicable), including a separate statement of the net receipts from each supply plant and/or from

each reserve supply plant, computed pursuant to § 1030.7(d)(1)(i);

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1030.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1030.9(b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

[39 FR 15405, May 3, 1974, as amended at 49 FR 32340, Aug. 14, 1984; 49 FR 33205, Aug. 22, 1984]

§ 1030.31 Payroll reports.

(a) On or before the 25th day after the end of each month, each handler described in § 1030.9(a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1030.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1030.32 Other reports.

(a) Each handler described in § 1030.9(a), (b), and (g), shall report to the market administrator on or before the 10th day after the end of the month in detail and on forms prescribed by the market administrator as follows:

(1) Each handler described in § 1030.9(g) shall report the quantities of skim milk and butterfat in fluid milk products and fluid cream products moved for his account from each pool plant and received at each pool plant or partially regulated distributing plant during the month; and

(2) Each handler pursuant to § 1030.9(a) and (b) shall report for each load of milk diverted for his account:

(i) The quantity of each producer's milk so diverted;

(ii) The date(s) of pickup of each producer's milk; and

(iii) The name and location of the plants to which and from which milk was diverted; and

(3) Each handler who, during the month, received milk from a dairy farmer from whom he had not received milk during the previous calendar month, shall report the name and address of the dairy farmer and the plant to which each such person previously delivered milk. Each handler who discontinues receiving milk from a producer during the month shall report each such producer's name, address, and the plant to which such person transferred.

(b) In addition to the reports required pursuant to paragraph (a) of this section and §§ 1030.30 and 1030.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

[42 FR 38582, July 29, 1977]

CLASSIFICATION OF MILK

§ 1030.40 Classes of utilization.

Except as provided in § 1030.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1030.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, or eggnog, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes, and yogurt; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1030.15; and

(6) In shrinkage assigned pursuant to § 1030.41(a) to the receipts specified in § 1030.41(a)(2) and in shrinkage specified in § 1030.41(b) and (c).

[39 FR 15405, May 3, 1974, as amended at 42 FR 38583, July 29, 1977]

§ 1030.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1030.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant (or at all of a handler's supply plants and/or reserve supply plants combined or at all of a handler's distributing plants combined if such reports are filed pursuant to § 1030.30) to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraphs (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraphs (b) (1) through (6) of this section, excluding that received in the form of a packaged fluid milk product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in § 1030.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1030.9(c) and in milk diverted to such plant from another pool plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants (or pool plants of other handlers, if applicable);

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other pool plants (or pool plants of other handlers, if applicable) and to nonpool plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraphs (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1030.9(b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

[39 FR 15405, May 3, 1974, as amended at 42 FR 38583, July 29, 1977; 49 FR 32340, Aug. 14, 1984]

§ 1030.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant (or to the pool plant of another handler if a combined report is filed pursuant to § 1030.30 by the transferor-handler) shall be classified as Class I milk unless the operators of both plants request the same classification in another class. The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant or divertee-plant after the computations pursuant to § 1030.44(a)(12) and the corresponding step of § 1030.44(b).

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b)(1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1030.40.

(c) *Transfers to producer-handlers and transfers and diversions to exempt distributing plants.* Skim milk or butterfat in the following forms that is transferred from a pool plant to a producer-handler under this or any other Federal order or transferred or diverted from a pool plant to an exempt distributing plant shall be classified:

(1) As Class I milk, if so moved in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the transferee's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to its receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant, a producer-handler plant, or an exempt distributing plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraphs (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraphs (d)(2) (ii) through (viii) of this section:

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1030.30 for the month within which such transaction occurred; and (*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

[39 FR 15405, May 3, 1974, as amended at 42 FR 38583, July 29, 1977]

§ 1030.43 General classification rules.

In determining the classification of producer milk pursuant to § 1030.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1030.30 and shall compute separately for each pool plant (or plants, if applicable) and for each cooperative association with respect to milk for which it is the handler pursuant to § 1030.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1030.40, 1030.41, and 1030.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1030.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative.

[42 FR 38583, July 29, 1977]

§ 1030.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1030.9 (a), (b), and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization pursuant to paragraphs (a) through (c) of this section. For this purpose only, a handler described in § 1030.9(a) who operates more than one pool plant may elect to have his receipts allocated for each of his pool plants separately or for all of his pool plants combined, except that, if he has receipts that would be allocated pursuant to paragraph (a) (11) or (12) of this section or the corresponding steps of paragraph (b) of this section, his total receipts shall be allocated for all of his pool plants combined.

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1030.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in:

(i) Receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(ii) Receipts of exempt milk;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1030.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1030.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1030.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1030.40(b)(1) that was not subtracted pursuant to paragraphs (a) (4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order and from an exempt distributing plant;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2)(i) of this section;

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(vii) Receipts of fluid milk products (other than exempt milk) from a government which has elected nonproducer status for the month pursuant to § 1030.19; and

(viii) Receipts of fluid milk products from persons described in § 1030.12(b)(5);

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III, but not in excess of such quantities, the pounds of skim milk in each of the following;

(i) Receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a) (2)(i) and (7)(v) of this section:

(*a*) For which the handler requests a classification other than Class I; or

(*b*) Which are in excess of the pounds of skim milk determined by multiplying the pounds of skim milk remaining in Class I (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler) by 1.25 and subtracting the sum of the pounds of skim milk in receipts of producer milk, fluid milk products from other pool plants (or from pool plants of other handlers if § 1030.43(d) applies), and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(ii) Receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1030.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraphs (a) (5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities in Class I and in Class II and Class III combined (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a) (2)(i), (7)(v), and (8)(i) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received;

(12) Subtract in the order specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraphs (a) (7)(vi) and (8)(ii) of this section:

(i) From each class, in series beginning with Class III, the pounds determined by multiplying the pounds of such net receipts by the larger of the percentage of estimated combined Class II and Class III utilization of skim milk announced for the month by the market administrator pursuant to § 1030.45(a) or the percentage that the combined Class II and Class III utilization remaining is of the total remaining utilization of skim milk of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler); and

(ii) From Class I, the remainder of such receipts;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from other pool plants (or from pool plants of other handlers if § 1030.43(d) applies) according to the classification of such products pursuant to § 1030.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

[39 FR 15405, May 3, 1974, as amended at 42 FR 38583, July 29, 1977]

§ 1030.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1030.44(a)(12) and the corresponding step of § 1030.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1030.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 17th day after the end of each month, report to each cooperative association, upon request by such association, the percentage of the milk caused to be delivered by the cooperative association for its members which was utilized in each class at each pool plant receiving such milk. For the purpose of this report, the milk so received shall be allocated to each class at each pool plant in the same ratio as all producer milk received at such plant during the month.

CLASS PRICES

§ 1030.50 Class prices.

Subject to the provisions of § 1030.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.26: *Provided,* That from the effective date hereof through March 1975 the Class I price shall be the basic formula price for the preceding month plus $1.26.

(b) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price computed pursuant to § 1030.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, except that, for each month after the first month in which this paragraph is effective, the final Class II price shall be not less than the Class III price.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1030.51 and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1030.51a.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

[39 FR 15405, May 3, 1974, as amended at 40 FR 6315, Feb. 11, 1975; 46 FR 43377, Aug. 28, 1981]

§ 1030.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1030.51a Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1030.51 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1030.20 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following subparagraphs is of the total of the data represented in paragraphs (c) (1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

NOTE: The computation of the basic Class II formula price is affected by a determination document published on Sept. 6, 1984 at 49 FR 35078.

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

NOTE: The computation of the basic Class II formula price is affected by a determination document published on Sept. 6, 1984 at 49 FR 35078.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

[46 FR 43377, Aug. 28, 1981, as amended at 49 FR 35078, Sept. 6, 1984]

§ 1030.52 Plant location adjustments for handlers.

A location adjustment for each handler shall be computed by the market administrator as follows:

(a) The market administrator shall determine the location adjustment rate for each plant at which milk is to be priced under this part pursuant to the following schedule, except that in no event shall the adjustment result in a price less than the Class III price for the month:

Zone	Distance in miles from city hall in Chicago	Location adjustment rate (cents per hundredweight)
1	0-40	0
2	41-55	-3.0
3	56-70	-6.0
4	[1] 71-85	-9.0
5	[2] 86-100	-12.0
6	101-115	-14.3
7	116-130	-16.6
8	131-145	-18.9
9	146-160	-21.2
10	161-175	-23.5
11	176-190	-25.8
12	191-205	-28.1
13	206-220	-30.4
14	221-235	-32.7
15	236-250	-35.0
16	(3)	-36.0

[1] Including Milwaukee County, Wis., and Winnebago County, Ill.

[2] Excluding Milwaukee County, Wis., and Winnebago County, Ill.

[3] Beyond 250

(b) The mileages applicable pursuant to this section and § 1030.75 shall be determined by the market administrator on the basis of the shortest highway distance between the handler's plant and the city hall in Chicago—with fractions rounded up to the next whole mile. The market administrator shall notify each handler of the zone or mileage determination, which shall be subject to redetermination at all times. In the event a handler requests a redetermination of the mileage pertaining to any plant, the market administrator shall notify the handler of his findings within 30 days after the receipt of such request. Any financial obligations resulting from a change in mileage shall not be retroactive for any period prior to the redetermination announced by the market administrator.

(c) A handler who operates a pool distributing plant (or plants) shall receive a location adjustment computed as follows:

(1) Determine the aggregate quantity of Class I milk at such plant (or all pool plants of such handler for which his total receipts are allocated for all his pool plants combined pursuant to § 1030.44 after eliminating duplication for transfer between such plants);

(2) Subtract the receipts of exempt milk and the quantity of packaged fluid milk products received at the handler's pool plant(s) from the pool plants of other handlers (or other pool plants, if applicable) and from nonpool plants if assigned to Class I milk;

(3) Subtract the quantity of bulk fluid milk products shipped from the handler's pool plant(s) to pool plants of other handlers (or other pool plants, if applicable) and to nonpool plants that are classified as Class I;

(4) Subtract the Class I milk packaged by pool supply plants and disposed of as route disposition or to other plants;

(5) Subtract the quantity of bulk fluid milk products received at the handler's pool plant(s) from other order plants and unregulated supply plants that are assigned to Class I pursuant to § 1030.44;

(6) Assign the remaining quantity pro rata to receipts during the month from each source as specified in paragraphs (c)(6)(i) and (ii) of this section:

(i) Receipts at the handler's pool distributing plant(s) of producer milk, except that if the quantity prorated to any distributing plant exceeds the Class I disposition from such plant, such quantity shall be reduced to the amount of such Class I disposition and the quantity of milk represented in such reduction shall be prorated to receipts of producer milk at other distributing plants of the handler (limited in each instance to the amount of Class I disposition at each such plant) and receipts of bulk fluid milk products at such distributing plants from other pool plants; and

(ii) Receipts of bulk fluid milk products at such distributing plants from each other pool plant according to the quantity of such receipts from each such source;

(7) If receipts during the month at such distributing plants of producer milk, milk diverted from other pool plants, and bulk fluid milk products from other pool plants are less than the quantity to be assigned pursuant to paragraph (c)(6) of this section, prorate the amount of such excess in the same manner over such receipts in the next prior month in which there were receipts in excess of those assigned in that month pursuant to this paragraph (c)(7) of this section;

(8) Multiply by the location adjustment rates applicable at the transferor plants, the quantity assigned to receipts of producer milk and milk diverted from other pool plants at such distributing plant pursuant to paragraphs (c) (6)(i) and (7) of this section;

(9) Multiply by the location adjustment rates applicable at the transferor plants, the lesser of:

(i) 110 percent of the quantities assigned to receipts from each other pool plant pursuant to paragraph (c)(6)(ii) of this section; or

(ii) Receipts specified in paragraph (c)(6)(ii) of this section;

(10) Multiply by the location adjustment rates applicable at the transferor plants, the quantities assigned pursuant to paragraph (c)(7) of this section to receipts from other pool plants in prior months;

(11) Multiply the quantity of bulk fluid milk products shipped from the handler's pool plant(s) to nonpool plants and classified as Class I by the location adjustment rate applicable at the shipping plant;

(12) Multiply the quantity of Class I milk packaged by pool supply plants and disposed of as route disposition or to other plants by the location adjustment rates applicable at the pool supply plants from which disposition is made; and

(13) Add together the minus amounts obtained pursuant to paragraphs (c) (8), (9), (10), (11), and (12) of this section.

(d) A handler (other than one described in paragraph (c) of this section) who operates a pool supply plant shall receive a location adjustment credit on receipts at such plant of producer milk and milk diverted from other pool plants that is classified as Class I but is not shipped as a bulk fluid milk product to a pool distributing plant.

(e) The Class I price applicable to other source milk shall be reduced at the rates set forth in paragraph (a) of this section.

[42 FR 38583, July 29, 1977]

§ 1030.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month and, for each month after the first month in which this section is effective, the final Class II price for the preceding month; and on or before the 15th day of each month the tentative Class II price for the following month.

[46 FR 43377, Aug. 28, 1981]

§ 1030.54 Equivalent price.

If for any reason a price quotation or other pricing factor required by this order for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price quotation or price factor determined by the Secretary to be equivalent to that required.

UNIFORM PRICE

§ 1030.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler described in § 1030.9 (a), (b), and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1030.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1030.44(a)(14) and the corresponding step of § 1030.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1030.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1033.44(a)(9) and the corresponding step of § 1030.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1030.44(a)(7) (i) through (iv), (vii), and (viii) and the corresponding step of § 1030.44(b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1030.44(a)(7) (v) and (vi) and the corresponding step of § 1030.44(b);

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1030.44(a)(11) and the corresponding step of § 1030.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(g) Subtract an amount equal to the minus location adjustment computed pursuant to § 1030.52(c)(13) or (d).

[39 FR 15405, May 3, 1974, as amended at 42 FR 38584, July 29, 1977]

§ 1030.61 Computation of uniform price.

For each month the market administrator shall compute the uniform price per hundredweight of producer milk of 3.5 percent butterfat content at plants in Zone I pursuant to paragraphs (a) through (e) of this section. If the unreserved cash balance in the producer-settlement fund to be included in the computation is less than 2 cents per hundredweight of producer milk on all reports, the report of any handler who has not made the payments required pursuant to § 1030.71 for the preceding month shall not be included in the computation of the uniform price. The report of such handler shall not be included in the computation for succeeding months until he has made full payment of outstanding monthly obligations. Subject to the aforementioned conditions, the market administrator shall compute the uniform price in the following manner:

(a) Combine into one total the values computed pursuant to § 1030.60 for all handlers;

(b) Add an amount equal to the total value of the minus location adjustments computed pursuant to § 1030.75(a);

(c) Add an amount representing not less than one-half the unobligated balance in the producer-settlement fund;

(d) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1030.60(f); and

(e) Subtract not less than 4 cents nor more than 5 cents per hundredweight.

§ 1030.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 14th day after the end of each month the uniform price for such month.

PAYMENTS FOR MILK

§ 1030.70 Producer-settlement fund.

The market administrator shall maintain a separate fund known as the "producer-settlement" fund into which he shall deposit all payments received pursuant to paragraph (a) of this section and out of which he shall make all payments required pursuant to paragraph (b) of this section.

(a) Payments made by handlers pursuant to §§ 1030.71, 1030.76, 1030.77 and 1030.78.

(b) Payments due handlers pursuant to §§ 1030.72 and 1030.77: *Provided*, That payments due any handler shall be offset by payments due from such handler pursuant to §§ 1030.71, 1030.76, 1030.77, 1030.78, 1030.85 and 1030.86.

§ 1030.71 Payments to the producer-settlement fund.

(a) On or before the 16th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1030.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1030.75, of such handler's receipts of producer milk; and

(ii) The value at the uniform price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1030.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is

such route disposition from such plant in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant and the Class III price.

[39 FR 15405, May 3, 1974, as amended at 42 FR 38584, July 29, 1977]

§ 1030.72 Payments from the producer-settlement fund.

On or before the 17th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1030.71(a)(2) exceeds the amount computed pursuant to § 1030.71(a)(1): *Provided,* That if the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds become available.

§ 1030.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for producer milk received from such producer and for which payment is not made to a cooperative association pursuant to paragraph (b) or (c) of this section as follows:

(1) On or before the 3rd day after the end of each month, to each producer who has not discontinued shipping milk to such handler before the end of the month, for producer milk received during the first 15 days of the month at a rate per hundredweight not less than the lowest class price under the order for milk of 3.5 percent butterfat for the preceding month, less proper deductions authorized in writing by such producer; and

(2) On or before the 18th day after the end of each month, for producer milk received during such month, at a rate per hundredweight of not less than the uniform price as adjusted pursuant to §§ 1030.74, 1030.75 and 1030.86, less any payment made pursuant to paragraph (a)(1) of this section, and any proper deduction authorized in writing by such producer and plus or minus adjustments for errors in previous payments made to such producer. If by such date the handler has not received full payment from the market administrator pursuant to § 1030.72 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following receipt of the balance due from the market administrator.

(b) Payments required in paragraph (a) of this section shall be made by a handler to a cooperative association qualified under § 1030.18, or its duly authorized agent, for producer milk if the cooperative association is authorized to collect such payments for such producers and has presented the handler with a written request for such payments. Payments to the cooperative association pursuant to this paragraph shall be subject to the condition that the association has provided the handler with a written promise to reimburse the handler the amount of any actual loss incurred by the handler because of any improper claim on the part of the cooperative association. The amount of payment shall be equal to the sum of the individual payments otherwise payable for such producer milk and shall be paid by the handler as follows:

(1) On or before the 1st day after the end of each month for producer milk received during the first 15 days of the month; and

(2) On or before the 16th day after the end of each month for milk received during such month.

(c) Each handler shall pay a cooperative association for milk received by the handler from the cooperative association as follows:

(1) In the case of milk received from a pool plant(s) operated by a cooperative association:

(i) For milk received during the first 15 days of the month, the handler shall pay the cooperative association on or before the 1st day after the end of the month during which the milk was received at a rate per hundredweight not less than the lowest class price under the order for milk of 3.5 percent butterfat for the preceding month; and

(ii) For milk received during the month the handler shall pay the cooperative association on or before the 16th day after the end of the month during which the milk was received at a rate per hundredweight not less than the minimum class prices pursuant to § 1030.50, as adjusted by the butterfat differential specified in § 1030.74, and less any payment made pursuant to paragraph (c)(1)(i) of this section; and

(2) In the case of milk received from a cooperative association acting as a handler described under § 1030.9(c);

(i) For milk received during the first 15 days of the month, the handler shall pay a cooperative association on or before the 1st day after the end of the month during which the milk was received at a rate per hundredweight not less than the lowest class price under the order for milk of 3.5 percent butterfat for the preceding month; and

(ii) For milk received during the month, the handler shall pay the cooperative association on or before the 16th day after the end of the month during which the milk was received at a rate per hundredweight of not less than the uniform price computed as described under § 1030.61, as adjusted pursuant to §§ 1030.74 and 1030.75 and less any payment made pursuant to paragraph (c)(2)(i) of this section.

(d) In making payments for producer milk pursuant to paragraph (a)(2) or (b)(2) of this section, each handler shall furnish each producer or cooperative association to whom such payment is made a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The month and identity of the producer;

(2) The daily and total pounds for each producer (and the average butterfat content for the entire month only);

(3) The minimum rate or rates at which payment to the producer is required pursuant to this order;

(4) The rate that is used in making the payment if such rate is other than the applicable minimum rate;

(5) The amount, or the rate per hundredweight, and nature of each deduction claimed by the handler; and

(6) The net amount of payment to such producer or cooperative association.

§ 1030.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1030.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price pursuant to § 1030.61 for producer milk received at a plant shall be adjusted according to the location of the plant at the rates set forth in § 1030.52(a).

(b) The uniform price applicable to other source milk shall be reduced at the rates set forth in § 1030.52(a), except that the adjusted uniform price shall not be less than the Class III price.

§ 1030.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1030.30(b) and 1030.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price, both prices to be applicable at the location of the partially regulated distributing plant; and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1030.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1030.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1030.60 for such handler shall include, in lieu of the value of other source milk specified in § 1030.60(f) less the value of such other source milk specified in § 1030.71(a)(2)(ii), a value of milk determined pursuant to § 1030.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1030.7(b), subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1030.30(b) and 1030.31(b) similar reports for each such nonpool supply plant;

(b) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(c) The value of milk determined pursuant to § 1030.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1030.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1030.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

[39 FR 15405, May 3, 1974, as amended at 42 FR 38584, July 29, 1977]

§ 1030.77 Adjustment of accounts.

When verification by the market administrator of reports or payment of any handler discloses errors resulting in monies due (a) the market administrator from such handler, (b) such handler from the market administrator, or (c) any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made not later than the date for making payment next following such disclosure.

§ 1030.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to § 1030.71, § 1030.76, § 1030.77, § 1030.85 or § 1030.86, shall be increased three-fourths of one percent on the 7th day after the due date each month.

(a) The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid interest charges previously computed pursuant to this section;

(b) For the purpose of this section, any unpaid obligation that is determined at a date later than prescribed by the order because of a handler's failure to submit a report to the market administrator shall be considered to have been due when it would have been due if such report had been submitted at the proper time; and

(c) Payment of any interest obligation computed pursuant to this section in an amount less than $10 shall be delayed until the accumulated interest obligation of such handler equals or exceeds $10.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1030.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 18th day after the end of each month 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including such handler's own farm production and including for a handler described in § 1030.9(c) producer milk described in § 1030.13(d));

(b) Other source milk allocated to Class I pursuant to § 1030.44(a) (7) and (11) and the corresponding steps of § 1030.44(b), except such other source milk that is excluded from the computations pursuant to § 1030.60 (d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1030.76(a)(2).

§ 1030.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler in making payments to each producer pursuant to § 1030.73 shall deduct 5 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to producer milk received by such handler (except such handler's own farm production) during the month, and shall pay such deductions to the market administrator not later than the 18th day after the end of the month. Such monies shall be used by the market administrator to verify or establish weights, samples, and tests of producer milk and to provide producers with market information. Such services shall be performed by the market administrator or by an agent engaged by and responsible to him.

(b) In the case of member producers for whom a cooperative association is performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section such deductions as are authorized by such producers and, on or before the 18th day after the end of each month, pay over such deductions to the association rendering such services.

PART 1032—MILK IN SOUTHERN ILLINOIS MARKETING AREA

Subpart—Order Regulating Handling

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ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1032.85 Assessment for order administration.
1032.86 Deduction for marketing services.

AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended (7 U.S.C. 601-674).

SOURCE: 39 FR 15417, May 3, 1974, unless otherwise noted.

Subpart—Order Regulating Handling

GENERAL PROVISIONS

§ 1032.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§1032.2 Southern Illinois marketing area.

"Southern Illinois marketing area," hereinafter called the "marketing area", means all the territory within the following counties, all of which are in the State of Illinois, together with all municipal corporations therein and all institutions owned or operated by the Federal, State, county, or municipal governments located wholly or partially within such counties:

BASE ZONE

Bond, Calhoun, Christian, Clark, Clay, Clinton, Coles, Crawford, Cumberland, Edwards, Effingham, Fayette, Greene, Jasper, Jefferson, Jersey, Lawrence, Macoupin, Madison (Alton Township only), Marion, Montgomery, Richland, Shelby, Wabash, Washington, and Wayne.

NORTHERN ZONE

Champaign, De Witt, Douglas, Edgar, Logan, Macon, McLean, Menard, Morgan, Moultrie, Piatt, Sangamon and Vermilion.

SOUTHERN ZONE

Franklin, Hamilton, Jackson, Madison (except Alton Township) Monroe, Perry, Randolph, Saline, St. Clair (except Scott Military Reservation, East St. Louis, Centreville, Canteen, and Stites Townships and the city of Belleville), White and Williamson.

[50 FR 46627, Nov. 12, 1985]

§ 1032.3 Route disposition.

"Route disposition" means a delivery (including disposition from a plant store or from a distributing point and distribution by a vendor or vending machine) to a retail or wholesale outlet, other than a plant, of any fluid milk product classified as Class I milk.

§ 1032.4 [Reserved]

§ 1032.5 Distributing plant.

"Distributing plant" means any plant at which fluid milk products are processed and packaged and from which there is route disposition of Grade A fluid milk products in the marketing area during the month.

§ 1032.6 Supply plant.

"Supply plant" means any plant at which Grade A milk is received from dairy farmers and from which fluid milk products are moved to a distributing plant.

§ 1032.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means a plant specified in paragraph (a), (b), or (c) of this section. For purposes of determining pool plant status pursuant to this section, Grade A receipts from dairy farmers shall include all quantities of milk diverted pursuant to § 1032.13(b) (1), (2), and (3) by an operator of a pool plant.

(a) A distributing plant from which during the month there is:

(1) Route disposition, except filled milk, in the marketing area equal to 10 percent or more of its Grade A receipts from dairy farmers and handlers described in § 1032.9(c), or an average of not less than 7,000 pounds per day of route disposition, except filled milk, in the marketing area; and

(2) Total route disposition, except filled milk, equal to 50 percent or more of its Grade A receipts from dairy farmers and handlers described in § 1032.9(c) during the months of August through February and 40 percent during all other months.

(b) A supply plant from which during the month an amount equal to 50 percent or more of its receipts of Grade A milk from dairy farmers and handlers described in § 1032.9(c) is moved to and received at a pool plant(s) described in paragraph (a) of this section which have at least 50 percent Class I use (not including filled milk) of the total of such supply plant milk and producer milk receipts in the months of August through February and 40 percent in other months.

(c) Any supply plant which qualified pursuant to paragraph (b) of this section in each of the immediately preceding months of September through January shall be a pool plant for the months of February through August unless the operator of such plant notifies the market administrator in writing before the first day of any such month of his intention to withdraw such plant as a pool plant, in which case such plant shall thereafter be a nonpool plant until it again meets the shipping requirements set forth in paragraph (b) of this section.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A distributing plant qualified pursuant to paragraph (a) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another order issued pursuant to the Act and from which during the month there is a greater quantity of route disposition, except filled milk, in the marketing area regulated by the other order than in the Southern Illinois marketing area: *Provided*, That such a distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of such route disposition is made in such other marketing area, unless the other order requires regulation of the plant without regard to its qualifying as a pool plant under this order subject to the proviso of this paragraph;

(3) A distributing plant qualified pursuant to paragraph (a) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another Federal order and from which during the month there is a greater quantity of route disposition, except filled milk, in the Southern Illinois marketing area than in the other marketing area, and such other order which fully regulates the plant does not contain provisions to exempt the plant from regulation even though such plant has greater such route disposition in the marketing area of the Southern Illinois order; and

(4) Any plant qualified pursuant to paragraph (c) of this section for any portion of the period of February through August, inclusive, that the milk at such plant is subject to the classification and pricing provisions of another order issued pursuant to the Act.

§ 1032.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products are shipped to a pool plant.

§ 1032.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of a pool plant;

(b) Any cooperative association with respect to milk of its members diverted for its account pursuant to § 1032.13;

(c) Any cooperative association with respect to the milk of its members which is received from the farm for delivery to the pool plant of another handler in a tank truck owned and operated by, or under contract to such cooperative association. The cooperative association, prior to the first day of the month of delivery, shall notify in writing the market administrator and the handler to whose plant the milk is delivered, that it will be the handler for the milk. For purposes of location adjustments to producers, milk so delivered shall be deemed to have been received by the cooperative association at a pool plant at the location of the pool plant to which it is delivered;

(d) Any person in his capacity as the operator of a partially regulated distributing plant;

(e) A producer-handler;

(f) Any person who operates an other order plant described in § 1032.7(d); and

(g) Any person in his capacity as the operator of an unregulated supply plant.

§ 1032.10 Producer-handler.

"Producer-handler" means a person who:

(a) Operates a distributing plant and processes milk from his own farm production and who disposes of all or a portion of such milk as route disposition in the marketing area but who receives no milk from other dairy farmers or fluid milk products from nonpool plants: *Provided*, That the skim milk and butterfat disposed of in the form of fluid milk products designated as Class I milk pursuant to § 1032.40(a) does not exceed the skim milk and butterfat, respectively, in the form of milk from his own farm production, and in the form of fluid milk products from pool plants of other handlers, allowing for inventory derived from such sources; and

(b) Assumes as his personal enterprise and risk the processing and distribution of fluid milk products and the maintenance, care, and management of dairy animals and other resources necessary to produce his own farm milk production.

§ 1032.11 [Reserved]

§ 1032.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority, and whose milk is received at a pool plant or diverted as producer milk pursuant to § 1032.13.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1032.44(a)(8)(iii) and the corresponding step of § 1032.44(b); and

(3) Any person with respect to milk produced by him which is reported as diverted to an other plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

§ 1032.13 Producer milk.

"Producer milk" means all skim milk and butterfat produced by producers which is:

(a) Received during the month:

(1) At a pool plant from producers or from a handler described in § 1032.9(c); and

(2) By a handler described in § 1032.9(c) but which is not delivered to a pool plant of another handler and constitutes shrinkage pursuant to § 1032.41(c) or Class I shrinkage; or

(b) Diverted by a handler who is the operator of a pool plant or by a cooperative association pursuant to the following conditions:

(1) Milk of a producer diverted from a pool plant for the account of the plant operator to another pool plant(s) for not more days of production of such producer's milk than is physically received at a pool plant(s) from which diverted;

(2) Milk of a producer diverted from a pool plant to a nonpool plant that is not a producer-handler plant or an

other order plant, on any day during the months of May, June, and July, during the months of August and December for not more than 12 days of production of producer milk by such producer, and in any other month for not more than 8 days of production of producer milk by such producer;

(3) Milk of a producer diverted during the month from a pool plant to a nonpool plant that is an other order plant, for not more days of production of producer milk, by such producer than is received at a pool plant(s) pursuant to paragraph (a) of this section;

(4) For pricing purposes, milk diverted pursuant to paragraphs (b) (2) and (3) of this section shall be deemed to be received by the diverting handler at the location of the plant to which diverted: *Provided*, That milk diverted pursuant to paragraph (b)(2) of this section to a plant located less than 50 miles (by the shortest highway distance as determined by the market administrator) from the pool plant from which diverted, shall be deemed to be received by the diverting handler at the location of the plant from which diverted; and

(5) For pricing purposes, milk diverted pursuant to paragraph (b)(1) of this section shall be deemed to be received by the diverting handler at the location of the plant to which diverted.

§ 1032.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1032.40 (b)(1) from any source other than producers, handlers described in § 1032.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1032.40(b)(1),

(c) Products (other than fluid milk products, products specified in § 1032.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1032.40(b)(1)) for which the handler fails to establish a disposition.

§ 1032.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form: Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

[39 FR 15417, May 3, 1974, as amended at 40 FR 31942, July 30, 1975]

§ 1032.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1032.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1032.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To be engaged in making collective sales, or marketing milk or its products for its members.

§ 1032.19 Reload point.

"Reload point" means a location at which facilities approved by a duly constituted health authority, only for the transfer of milk from one tank truck to another and for the washing of tank trucks and at which milk moved from the farm in a tank truck is commingled in a tank truck with milk from other tank trucks before entering a milk plant: *Provided*, That reloading facilities on the premises of a plant having equipment for the receiving, cooling, storing, and processing of milk, which equipment is in current use during the month, shall be considered a supply plant rather than a reload point.

§ 1032.20 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1032.51a:

(a) *Butter price.* "Butter price" means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) *Cheddar cheese price.* "Cheddar cheese price" means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following workday until the next price is reported. A work-day is each Monday through Friday except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) *Nonfat dry milk price.* "Nonfat dry milk price" means the simple average, for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Division as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding workday until the day such prices were previously reported. A work-day is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price.* "Edible whey price" means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

[46 FR 43377, Aug. 28, 1981]

HANDLER REPORTS

§ 1032.30 Reports of receipts and utilization.

On or before the 7th day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1032.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1032.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1032.9(b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1032.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1032.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1032.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1032.32 Other reports.

In addition to the reports required pursuant to §§ 1032.30 and 1032.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1032.40 Classes of utilization.

Except as provided in § 1032.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1032.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1032.15; and

(6) In shrinkage assigned pursuant to § 1032.41(a) to the receipts specified in § 1032.41(a)(2) and in shrinkage specified in § 1032.41 (b) and (c).

§ 1032.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1032.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraphs (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraphs (b) (1) through (6) of this section which was received in bulk fluid form;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in § 1032.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1032.9(c) and in milk diverted to such plant from another pool plant, except that, in either case, if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph (b)(2) shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraphs (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1032.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1032.42 Classification of transfers and diversions.

(a) *Transfers and diversions to pool plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers or diversions shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant or divertee-plant after the computations pursuant to § 1032.44(a)(12) and the corresponding step of § 1032.44(b);

(2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to § 1032.44(a)(7) or the corresponding step of § 1032.44(b), the skim milk or butterfat so transferred or diverted shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler or divertor-handler received during the month other source milk to be allocated pursuant to § 1032.44(a) (11) or (12) or the corresponding steps of § 1032.44(b), the skim milk or butterfat so transferred or diverted, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant or divertee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1032.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraphs (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraphs (d)(2) (ii) through (viii) of this section:

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1032.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent § 1032.41(b); possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plans shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

§ 1032.43 General classification rules.

In determining the classification of producer milk pursuant to § 1032.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1032.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1032.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1032.40, 1032.41, and 1032.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed or by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1032.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1032.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1032.9(a) for each of his pool plants separately and of each handler described in § 1032.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1032.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1032.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1032.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1032.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1032.40(b)(1) that was not subtracted pursuant to paragraphs (a) (4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a) (2) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a) (2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraphs (a)(8)(ii) (*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1032.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraphs (a) (5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraphs (a)(11) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants

of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a) (2), (7)(v), and (8) (i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this paragraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraphs (a)(7)(vi) and (8)(iii) of this section:

(i) Subject to the provision of paragraphs (a)(12) (ii), (iii), and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1032.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraphs (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraphs (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1032.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computation pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1032.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1032.44(a)(12) and the corresponding step of § 1032.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1032.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month, report to each cooperative association which so requests, the class utilization of producer milk received by each handler from a cooperative association or from members of the association. For the purpose of this report, the milk caused to be so delivered by an association shall be prorated to each class in the proportion that the total receipts of milk received from producers by such handler were used in each class.

CLASS PRICES

§ 1032.50 Class prices.

Subject to the provisions of § 1032.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.53.

(b) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price computed pursuant to § 1032.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, except that, for each month after the first month in which this paragraph is effective, the final Class II price shall be not less than the Class III price.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1032.51 and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1032.51a.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

[39 FR 15417, May 3, 1974, as amended at 46 FR 43378, Aug. 28, 1981; 50 FR 46628, Nov. 12, 1985]

§ 1032.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1032.51a Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1032.51 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1032.20 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used in the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacturer butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (c) (1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

NOTE: The computation of the basic Class II formula price is affected by a determination document published on Sept. 6, 1984 at 49 FR 35078.

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

NOTE: The computation of the basic Class II formula price is affected by a determination document published on Sept. 6, 1984 at 49 FR 35078.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

[46 FR 43378, Aug. 28, 1981, as amended at 49 FR 35078, Sept. 6, 1984]

§ 1032.52 Plant location adjustments for handlers.

(a) For producer milk received at a pool plant which is classified as Class I milk, the price specified in § 1032.50(a) shall be adjusted for the location of such plant by the following amount:

(1) For a plant located within one of the zones designated in § 1032.2, the adjustment shall be as follows:

Zone	Adjustment per hundredweight
Base Zone	No adjustment
Northern Zone	Minus 7 cents
Southern Zone	Plus 7 cents

(2) For a plant located outside the marketing area but in any of the following territory the adjustment shall be as follows:

(i) *Plus 7 cents.* St. Clair County (Scott Military Reservation, East St. Louis, Centreville, Canteen, and Stites Townships and the city of Belleville only) in the State of Illinois and the counties of Jefferson, St. Charles and St. Louis and the city of St Louis in the State of Missouri.

(ii) *Minus 7 cents.* In the State of Illinois and south of the northern boundaries of Adams and Schuyler counties (except for the territory in St. Clair County, Illinois specified in paragraph (a)(2)(i) of this section) and in the counties of Fountain, Parke, Vermillion and Warren in the State of Indiana.

(3) For a plant located outside the marketing area and the area described in paragraph (a)(2) of this section, the adjustment shall be minus 15 cents for any such plant located 100 miles or more from the city or village limit of Alton, Robinson, or Vandalia, Illinois, whichever is nearest, and minus an additional 1.5 cents for each 10 miles or fraction thereof that such distance exceeds 110 miles.

(4) In determining location adjustments, mileage shall be based on the shortest hard-surfaced highway distance as determined by the market administrator.

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned Class I disposition at the transferee-plant only to the extent that 110 percent of Class I disposition at the transferee-plant exceeds the sum of receipts at such plant from producers and handlers described in § 1032.9(c), and the volume assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to receipts of fluid milk products from pool plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

[39 FR 15417, May 3, 1974, as amended at 40 FR 39846, Aug. 29, 1975; 50 FR 46628, Nov. 12, 1985]

§ 1032.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month and, for each month after the first month in which this section is effective, the final Class II price for the preceding month; and on or before the 15th day of each month the tentative Class II price for the following month.

[46 FR 43379, Aug. 28, 1981]

§ 1032.54 Equivalent price.

If for any reason a price quotation required by this part for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price which is required.

UNIFORM PRICE

§ 1032.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1032.9(b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1032.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1032.44(a)(14) and the corresponding step of § 1032.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1032.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1032.44(a)(9) and the corresponding step of § 1032.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1032.44(a)(7) (i) through (iv) and the corresponding step of § 1032.44(b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1032.44(a)(7) (v) and (vi) and the corresponding step of § 1032.44(b);

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1032.44(a)(11) and the corresponding step of § 1032.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(g) For the first month that this paragraph is effective, subtract the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class II price, both for the preceding month, by the hundredweight of skim milk and butterfat in any fluid milk product or product specified in § 1032.40(b) that was in the plant's inventory at the end of the preceding month and classified as Class I milk.

§ 1032.61 Computation of uniform price (including weighted average price).

For each month the market administrator shall compute the uniform price per hundredweight of milk of 3.5 percent butterfat content which is received from producers at plants located in the "base zone" as follows:

(a) Combine into one total the values computed pursuant to § 1032.60 for all handlers who filed the reports prescribed by § 1032.30 for the month and who made the payments pursuant to §§ 1032.71 and 1032.73 for the preceding month;

(b) Add an amount equal to the value of the net location and zone adjustments (reductions minus increases) applicable to the uniform price pursuant to § 1032.75;

(c) Add an amount equal to one-half of the unobligated balance in the producer-settlement fund;

(d) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1032.60(f);

(e) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "weighted average price," and the "uniform price" for milk received from producers.

[39 FR 15417, May 3, 1974, as amended at 45 FR 23404, Apr. 7, 1980]

§ 1032.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 12th day after the end of each month the uniform price for such month.

PAYMENTS FOR MILK

§ 1032.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund," which shall function as follows:

(a) All payments made by handlers pursuant to §§ 1032.71, 1032.76, and 1032.77 shall be deposited in such fund and out of which shall be made all payments pursuant to §§ 1032.72 and 1032.77: *Provided*, That any payments due to any handler shall be offset by any payments due from such handler.

[39 FR 15417, May 3, 1985, as amended at 50 FR 46628, Nov. 12, 1985]

§ 1032.71 Payments to the producer-settlement fund.

(a) On or before the 15th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1032.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1032.75, of such handler's receipts of producer milk; and

(ii) The value at the weighted average price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1032.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

§ 1032.72 Payments from the producer-settlement fund.

On or before the 17th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1032.71(a)(2) exceeds the amount computed pursuant to § 1032.71(a)(1). The market administrator shall offset any payment due any handler against any payments due from such handler.

§ 1032.73 Payments to producers and to cooperative associations.

(a) Except as provided in paragraphs (b), (c), and (d) of this section, each handler shall make payment for milk received during the month as follows:

(1) On or before the last day of each month to each producer who did not discontinue shipping milk to such handler before the 25th day of the month an amount equal to not less than the Class III price for the preceding month multiplied by the hundredweight of milk received from such producer during the first 15 days of the month, less proper deductions authorized by such producer to be made from payments due pursuant to this paragraph;

(2) On or before the 20th day of the following month to each producer, an amount equal to not less than the uniform price, as adjusted pursuant to §§ 1032.74 and 1032.75, multiplied by the hundredweight of milk received from such producer during the month, subject to the following adjustments:

(i) Less payments made to such producer pursuant to paragraph (a)(1) of this section;

(ii) Less deductions for marketing services made pursuant to § 1032.86;

(iii) Plus or minus adjustments for errors made in previous payments made to such producer; and

(iv) Less proper deductions authorized in writing by such producer: *Provided*, That, if by such date, such handler has not received full payment from the market administrator pursuant to § 1032.72 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payments to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after the receipt of the balance due from the market administrator.

(b) Payments required in paragraph (a) of this section shall be made to a cooperative association, qualified under § 1032.18 or its duly authorized agent, which the market administrator determines is authorized by its members to collect payment for their milk and which has so requested any handler in writing. Such handler shall, on or before the 18th day of the following month pay the cooperative association for milk received during the month from the producer-members of such association as determined by the market administrator an amount equal to not less than the amount due such producer-members as determined pursuant to paragraph (a) of this section, less any deductions authorized in writing by such association: *Provided*, That the association has provided the handler with a written promise to reimburse the handler the amount of any actual loss incurred by such handler because of any improper claim on the part of the cooperative association;

(c) On or before the 18th day after the end of each month, each handler shall pay to each cooperative association for milk the handler receives at his pool plant from a pool plant(s) operated by such association, not less than the minimum prices for milk in each class, as adjusted by the butterfat differential specified in § 1032.74, that are applicable at the location of the handler's pool plant;

(d) On or before the 18th day of the following month, each handler, in his capacity as the operator of a pool plant, who receives milk for which a cooperative association is the handler pursuant to § 1032.9(c) shall pay such cooperative association for such milk at the uniform price as adjusted pursuant to §§ 1032.74 and 1032.75;

(e) None of the provisions of this section shall be construed to restrict any cooperative association qualified under section 8c(5)(F) of the Act from making payment for milk to its producers in accordance with such provision of the Act, and

(f) Each handler who receives milk during the month from producers for which payment is to be made to a cooperative association pursuant to paragraph (b) of this section shall report to such cooperative association for each such producer on forms approved by the market administrator as follows:

(1) On or before the 25th day of the month, the total pounds of milk received during the first 15 days of such month; and

(2) On or before the 7th day after the end of the month, the total pounds of milk received from each producer, together with the butterfat content of such milk, and the amount or rate and nature of any deductions authorized by the cooperative association.

§ 1032.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1032.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price for producer milk received at a pool plant shall be adjusted according to the location of the pool plant at the rates set forth in § 1032.52(a); and

(b) The weighted average price applicable to other source milk shall be subject to the same adjustments applicable to the uniform price under paragraph (a) of this section, except that the adjusted weighted average price shall not be less than the Class III price.

§ 1032.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1032.30(b) and 1032.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from

the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the weighted average price, both prices to be applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1032.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1032.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1032.60 for such handler shall include, in lieu of the value of other source milk specified in § 1032.60(f) less the value of such other source milk specified in § 1032.71(a)(2)(ii), a value of milk determined pursuant to § 1032.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1032.7 (b) and (c), subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1032.30(b) and 1032.31(b) similar reports for each such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(c) The value of milk determined pursuant to § 1032.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1032.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(ii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1032.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of an other order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

§ 1032.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses errors resulting in moneys due (a) the market administrator, from such handler, (b) such handler from the market administrator, or (c) any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments as set forth in the provisions under which such error occurred.

§ 1032.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to § 1032.71, § 1032.85, or § 1032.86 shall be increased one-half of 1 percent for each month or portion thereof that such payment is overdue.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1032.85 Assessment for order administration.

As his pro rata share of the expense of administering the order, each handler (excluding a handler described in § 1032.9 (c) with respect to milk delivered to pool plants) shall pay to the market administrator on or before the 20th day after the end of the month 5 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) His producer milk (including such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1032.44(a)(7) and (11) and the corresponding steps of § 1032.44(b), except such other source milk that is excluded from the computations pursuant to § 1032.60(d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1032.76(a)(2).

§ 1032.86 Deduction for marketing services.

(a) *Deduction for marketing services.* Except as set forth in paragraph (b) of this section, each handler in making payments to producers pursuant to § 1032.73, shall deduct 6 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to all milk received by such handler from producers (excluding such handler's own production) during the month, and shall pay such deductions to the market administrator on or before the 20th day after the end of such month. Such moneys shall be used by the market administrator to verify weights, samples, and tests of milk received from such producers and to provide them with market information. Such services shall be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him.

(b) *Producers cooperative association.* In the case of producers for whom a cooperative association is actually performing as determined by the Secretary, the services set forth in paragraph (a) of this section each handler, in lieu of the deduction specified in paragraph (a) of this section, shall make such marketing service deductions as are authorized by producer-members, and pay the money so deducted to the cooperative association on or before the 20th day after the end of the month.

PART 1033—MILK IN THE OHIO VALLEY MARKETING AREA

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AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

SOURCE: 40 FR 27464, June 30, 1975, unless otherwise noted.

GENERAL PROVISIONS AND DEFINITIONS

§ 1033.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

§ 1033.5 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines, after application by the association:

(a) Is qualified under the provisions of the Act of Congress of February 18, 1922, known as the "Capper-Volstead Act" (7 U.S.C. 291, 292);

(b) Has full authority in the sale of milk of its members and is engaged in making collective sales of or marketing milk or milk products for its members; and

(c) Has its entire organization and all of its activities under the control of its members.

§ 1033.6 Ohio Valley marketing area.

The "Ohio Valley marketing area" hereinafter called the "marketing area", means all the territory, by designated zones, within the boundaries of the following geographical units, including all waterfront facilities connected therewith and all territory occupied by government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within the listed geographical units:

(a) The "Northwestern Zone" shall include the following territory:

OHIO COUNTIES

Allen, Auglaize, Crawford, Fulton, Hancock, Hardin, Henry, Logan, Lucas, Marion, Mercer, Morrow, Putnam, Richland, Sandusky (Woodville and Madison Townships only), Seneca, Van Wert (city of Delphos only), Wood, Wyandot.

MICHIGAN COUNTIES

Lenawee (Blissfield, Deerfield, Ogden, Palmyra, and Riga Townships only).

Monroe (except Ash, Berlin, Dundee, Exeter, London, and Milan Townships).

(b) The "Central Zone" shall include the following territory:

OHIO COUNTIES

Adams, Brown, Butler, Champaign, Clark, Clermont, Clinton, Darke, Delaware, Fairfield, Fayette, Franklin, Gallia, Greene, Hamilton, Highland, Hocking, Jackson, Knox, Lawrence, Licking, Madison, Miami, Montgomery, Pickaway, Pike, Preble, Ross, Scioto, Shelby, Union, Vinton, Warren.

KENTUCKY COUNTIES

Boone, Boyd, Bracken, Campbell, Grant, Greenup, Harrison, Kenton, Lewis, Mason, Pendleton, Robertson.

INDIANA COUNTIES

Dearborn, Ohio.

(c) The "Southeastern Zone" shall include the following territory:

OHIO COUNTIES

Athens, Coshocton (except Adams Township), Guernsey (except Oxford, Londonderry, and Millwood Townships), Meigs, Morgan, Muskingum, Noble, Perry, Washington.

KENTUCKY COUNTIES

Floyd, Johnson, Lawrence, Magoffin, Martin, Pike.

WEST VIRGINIA COUNTIES

Boone, Cabell, Calhoun, Fayette, Gilmer, Jackson, Kanawha, Lincoln, Logan, Mason, Mingo, Pleasants, Putnam, Raleigh, Ritchie, Roane, Wayne, Wirt, Wood, Wyoming.

§ 1033.7 Fluid milk product.

"Fluid milk product" means the following products or mixtures in either fluid or frozen form, including such products or mixtures that are flavored, cultured, modified (with added nonfat milk solids), concentrated, or reconstituted: Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, milk shake mixes containing less than 20 percent total solids, and mixtures of cream and milk or skim milk containing less than 10.5 percent butterfat. The term "fluid milk product" shall not include eggnog, yogurt, frozen desserts, frozen dessert mixes, dietary products and infant formulas in hermetically sealed metal or glass containers, evaporated or condensed milk or skim milk in plain or sweetened form, any product containing six percent or more nonmilk fat (or oil), and any product that contains by weight less than 6.5 percent nonfat milk solids.

[42 FR 11234, Feb. 28, 1977]

§ 1033.8 Route disposition.

"Route disposition" means a delivery, either directly or through any distribution facility (including disposition from a plant store or by a vendor or vending machine), of a fluid milk product classified as Class I pursuant to § 1033.41(a), except a delivery to a plant. However, for the single purpose of determining the qualification of a plant as a pool distributing plant packaged fluid milk products transferred as Class I milk from a plant (except a plant from which no fluid milk products are distributed to wholesale or retail outlets in the marketing area) to another plant shall be considered as route disposition of the transferor-plant and shall be considered as route disposition in the marketing area to the extent of the transferee-plant's route disposition in the marketing area.

[42 FR 11234, Feb. 28, 1977]

§ 1033.9 Plant.

(a) Except as provided in paragraph (b) of this section, "plant" means the land and buildings, together with their surroundings, facilities, and equipment, constituting a single operating unit or establishment which contains stationary holding facilities and which is operated for the bulk handling or processing of milk or milk products (including filled milk).

(b) The term "plant" shall not include distribution points (separate facilities used primarily for the transfer to vehicles of packaged fluid milk products moved there from processing and packaging plants) or bulk reload points (separate facilities at which milk moved from a farm in a tank truck is transferred to another tank truck and commingled with other milk before entering a plant). If a distribution point or bulk reload point is on the premises of a plant, it shall be considered a part of the plant operation.

§ 1033.10 Distributing plant.

"Distributing plant" means a plant in which fluid milk products approved by a duly constituted health authority for fluid consumption, or filled milk, are processed or packaged and from which there is route disposition in the marketing area during the month.

§ 1033.11 Supply plant.

"Supply plant" means a plant from which a fluid milk product approved by a duly constituted health authority for fluid consumption, or filled milk, is delivered to a pool plant during the month.

[40 FR 27464, June 30, 1975, as amended at 49 FR 36073, Sept. 14, 1984]

§ 1033.12 Pool plant.

"Pool plant" means a plant described in paragraph (a), (b), or (c) of this section that is not a producer-handler plant or a plant that is subject to another Federal order as set forth in § 1033.56.

(a) A distributing plant with:

(1) Route disposition in the marketing area during each month of not less than 15 percent of its total route disposition; and

(2) Route disposition of not less than 40 percent during each of the months of September through February, and 35 percent during each of the months of March through August, of its total receipts of fluid milk products (including milk diverted from such plant but excluding bulk fluid milk products received by transfer or diversion from other plants as Class II or Class III milk) that are approved by a duly constituted health authority for fluid consumption, subject to the following conditions:

(i) In making the percentage computations in paragraphs (a) (1) and (2) of this section, a plant's route disposition and receipts shall be exclusive of filled milk and of packaged fluid milk products priced as Class I milk under this or any other Federal order;

(ii) A distributing plant (except a plant that met the route disposition percentage on a unit basis under paragraph (a)(2)(iii) of this section) that does not meet the minimum route disposition percentage specified in paragraph (a)(2) of this section to qualify for pool status in the current month shall be deemed to have met such qualifying percentage in such month, if the plant met the applicable percentage in each of the three immediately preceding months; and

(iii) Two or more plants operated by the same handler may be considered as a unit for the purpose of meeting the total route disposition percentage specified in paragraph (a)(2) of this section if such handler requests that the plants be so considered and each plant in the unit meets the in-area route disposition percentage specified in paragraph (a)(1) of this section.

(b) A supply plant from which during the month 35 percent or more of the receipts at such plant from producers (including producer milk diverted from the plant but excluding milk diverted to such plant) and from handlers described in § 1033.16(c) is delivered by transfer or diversion as fluid milk products, except filled milk, to pool distributing plants qualified pursuant to paragraph (a) of this section, subject to the following conditions:

(1) The operator of a supply plant may include milk diverted from such plant to pool distributing plants as qualifying deliveries in meeting up to one-half of the required deliveries;

(2) A supply plant that does not meet the minimum delivery requirement specified in paragraph (b) of this section to qualify for pool status in the current month because a distributing plant to which the supply plant delivered its fluid milk products during such month failed to qualify as a pool plant pursuant to paragraph (a) of this section shall continue to be a pool plant for the current month if such supply plant qualified as a pool plant in the three immediately preceding months; and

(3) A supply plant that qualified as a pool plant in each of the immediately preceding months of September through February on the basis of its deliveries to pool distributing plants shall be a pool plant for each of the following months of March through August, unless the plant operator files a written request with the market administrator asking that such plant not be a pool plant. Such nonpool status shall be effective on the first day of the month following the receipt of such request and thereafter until the plant again qualifies as a pool plant on the basis of its deliveries to a pool distributing plant(s).

(c) A plant operated by a cooperative association if, during the month, 50 percent or more of the producer milk of members of the association is delivered to a pool distributing plant(s) either directly from the farm or by transfer from such association's plant, subject to the following conditions:

(1) The cooperative requests pool status for such plant;

(2) The 50-percent delivery requirement may be met for the current month or it may be met on the basis of deliveries during the preceding 12-month period ending with the current month;

(3) The plant is approved by a duly constituted health authority to handle milk for fluid consumption; and

(4) The plant does not qualify as a pool plant under paragraph (a) or (b) of this section or under the similar provisions of another Federal order applicable to a distributing plant or a supply plant.

[49 FR 36073, Sept. 14, 1984]

§ 1033.13 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of such plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a distributing plant that is not an other order plant or a producer-handler plant.

(d) "Unregulated supply plant" means a supply plant that is not an other order plant or a producer-handler plant.

§ 1033.14 Producer.

(a) Except as provided in paragraph (b) of this section, "Producer" means any person who produces milk approved by a duly constituted health authority for fluid consumption, whose milk is:

(1) Received at a pool plant directly from such person;

(2) Received at a pool plant from a handler described in § 1033.16(c); or

(3) Diverted from a pool plant in accordance with § 1033.15.

(b) "Producer" shall not include:

(1) Any person defined as a producer-handler under a Federal milk order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by such dairy farmer which is diverted to a pool plant from another order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1033.46(a)(8)(ii) and the corresponding step of § 1033.46(b); or

(3) Any person with respect to milk produced by such dairy farmer which is reported as diverted to another order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

[49 FR 36074, Sept. 14, 1984]

§ 1033.15 Producer milk.

"Producer milk" means the skim milk and butterfat contained in milk from producers which is:

(a) Received at a pool plant directly from a producer, excluding any such milk received by diversion from another pool plant;

(b) Received at a pool plant from a handler described in § 1033.16(c) under the conditions set forth therein;

(c) Received by a handler described in § 1033.16(c) from producers in excess of the quantity delivery to pool plants;

(d) Diverted from a pool plant for the account of the handler operating such plant to another pool plant; or

(e) Diverted from a pool plant to a nonpool plant (other than a producer-handler plant) for the account of the handler operating such pool plant or for the account of a handler described in § 1033.16(b), subject to the following conditions:

(1) During each of the months of September through November not less than one day's production of the producer must be physically received at a pool plant;

(2) In any month of September through February, the operator of a pool plant may divert the milk of any producer that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (e)(3) of this section. The operator of such plant may divert a total quantity of milk not exceeding 50 percent of the producer milk physically received at or diverted from such pool plant during the month;

(3) In any month of September through February, a cooperative association may divert an aggregate quantity of milk not exceeding 50 percent of the producer milk that the cooperative association caused to be physically received at or diverted from pool plants during the month; and

(4) Any milk diverted in excess of the limit set forth in paragraph (e)(2) or (3) of this section shall not be producer milk. The diverting handler shall designate the dairy farmer deliveries that shall not be producer milk. If the handler fails to designate the dairy farmer deliveries which are ineligible, producer milk status shall be forfeited with respect to all milk diverted to nonpool plants by such handler; and

(f) Milk diverted pursuant to paragraph (d) or (e) of this section shall be priced at the location of the plant were it is received.

[49 FR 36074, Sept. 14, 1984]

§ 1033.16 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) A cooperative association with respect to the producer milk which is diverted to nonpool plants for the account of such association pursuant to § 1033.15, excluding producer milk diverted by the association as the operator of a pool plant pursuant to paragraph (a) of this section;

(c) A cooperative association with respect to producer milk which is delivered for its account from the farm to a pool plant in a tank truck owned and operated by, or under contract to such cooperative association. Milk delivered pursuant to this paragraph shall not include producer milk diverted to another pool plant by the association as the operator of a pool plant pursuant to paragraph (a) of this section. Milk for which a cooperative association is the handler pursuant to this paragraph shall be deemed to have been received by such cooperative association at the location of the pool plant to which such milk was delivered;

(d) Any person in his capacity as the operator of a partially regulated distributing plant;

(e) Any person defined in § 1033.17; and

(f) Any person in his capacity as the operator of an other order plant described in § 1033.56.

[40 FR 27464, June 30, 1975, as amended at 49 FR 36074, Sept. 14, 1984]

§ 1033.17 Producer-handler.

"Producer-handler" means any person who:

(a) Operates a dairy farm and a distributing plant;

(b) Receives no fluid milk products from sources other than his own farm production, pool plants, and other order plants;

(c) Uses no milk products other than fluid milk products for reconstitution into fluid milk products; and

(d) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary for his own farm production and the operation of the processing, packaging, and distribution business are the personal enterprise and risk of such person.

§ 1033.18 Other source milk.

"Other source milk" means the skim milk and butterfat contained in or represented by:

(a) Fluid milk products and bulk cream from any source except producer milk, fluid milk products and bulk cream from pool plants, and fluid milk products and bulk cream in inventory at the beginning of the month;

(b) Products, other than fluid milk products and Class II products listed in § 1033.41(b)(1) and (3), from any source (including those produced at the plant) which are reprocessed, converted into, or combined with another product in the plant during the month; and

(c) Any disappearance of nonfluid products in a form in which they may be converted into a Class I product and which are not otherwise accounted for.

§ 1033.19 Chicago butter price.

"Chicago butter price" means the simple average, as computed by the market administrator, of the daily wholesale selling prices (using the midpoint of any price range as one price) per pound of 92-score bulk creamery butter at Chicago as reported for the month by the Department.

§ 1033.20 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1033.21 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1033.51a:

(a) *Butter price.* "Butter price" means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) *Cheddar cheese price.* "Cheddar cheese price" means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) *Nonfat dry milk price.* "Nonfat dry milk price" means the simple average, for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Division as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding workday until the day such prices were previously reported. A work-day is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price.* "Edible whey price" means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding work-day until the day such price was previously reported. A work-day is each Monday through Friday, except national holidays.

[47 FR 42967, Sept. 30, 1982]

MARKET ADMINISTRATOR

§ 1033.27 Additional duties of the market administrator.

In addition to the duties specified in § 1003.3(c) of this chapter, the market administrator shall perform the following duties:

(a)—(j) [Reserved]

(k) Publicly announce on or before:

(1) The 5th day of each month:

(i) The Class I price for the following month;

(ii) The final Class II price for the preceding month, except that the Class II price announced for the first month during which this paragraph is effective shall be the price specified in the proviso in § 1033.51(b);

(iii) The Class III price for the preceding month; and

(iv) The butterfat differential for the preceding month;

(2) The 12th day of each month, the uniform price for the preceding month; and

(3) The 15th day of each month, the tentative Class II price for the following month.

(l) On or before the 12th day after the end of each month:

(1) [Reserved]

(2) Report to each cooperative association the class utilization of milk received at each pool plant during the month from producers who have authorized such association to receive payments for them under § 1033.72(c). For the purpose of this report, the milk so received shall be prorated to each class in the proportions that the total receipts of producer milk at such plant were used in each class, adjusted to eliminate transfers of fluid milk products to other pool plants;

(m) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1033.46(a)(12) and the corresponding step of § 1033.46(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose;

(n) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products from an other order plant, the classification to which such receipts are allocated pursuant to § 1033.46 pursuant to such report, and thereafter any change in such allocation required to correct errors disclosed in the verification of such report; and

(o) Furnish to each handler operating a pool plant who has shipped fluid milk products and bulk cream to an other order plant the classification to which the skim milk and butterfat in such fluid milk products and bulk cream were allocated by the market administrator of the other order on the basis of the report of the receiving handler; and as necessary, any changes in such classification arising in the verification of such report.

[40 FR 27464, June 30, 1975, as amended at 40 FR 30087, July 17, 1975; 47 FR 42968, Sept. 30, 1982]

Reports

§ 1033.30 Reports of receipts and utilization.

On or before the sixth day after the end of each month, reports of receipts and utilization for such month shall be made to the market administrator, in the detail and on forms prescribed by the market administrator, as follows:

(a) Each handler operating a pool plant shall report for each of his pool plants:

(1) Receipts of skim milk and butterfat contained in or represented by:

(i) Producer milk, showing in the case of milk received directly from each producer the pounds and butterfat test and the number of days of production involved for each producer;

(ii) Fluid milk products and bulk cream from other pool plants;

(iii) Other source milk, with the identity of each source; and

(iv) Products listed in § 1033.41(b)(1) from other plants;

(2) Inventories of fluid milk products and products listed in § 1033.41(b)(1) at the beginning and the end of the month, showing separately such inventories in bulk form and in packaged form;

(3) The utilization or disposition of all skim milk and butterfat required to be reported pursuant to this paragraph, showing separately:

(i) Total route disposition and route disposition in the marketing area, showing separately such disposition of filled milk inside and outside the marketing area; and

(ii) Transfers and diversions to other plants; and

(4) Such other information with respect to the receipts and utilization of skim milk and butterfat as the market administrator may prescribe;

(b) Each cooperative association shall report:

(1) The quantities of skim milk and butterfat contained in milk from producers for which it is the handler pursuant to § 1033.16 (b) or (c), showing:

(i) The quantity of milk delivered to each plant; and

(ii) For each producer the pounds and butterfat test of the milk and the number of days of production involved;

(2) The utilization of all skim milk and butterfat required to be reported pursuant to paragraph (b)(1) of this section, except that contained in producer milk described in § 1033.15(b), and

(3) Such other information with respect to its receipts and utilization of skim milk and butterfat as the market administrator may prescribe; and

(c) Each handler operating a partially regulated distributing plant shall report as required in paragraph (a) of this section, except that receipts of bottling grade milk from dairy farmers shall be reported in lieu of receipts of producer milk. Such report shall include a separate statement showing the amount of reconstituted skim milk in route disposition in the marketing area.

[40 FR 27454, June 30, 1975, as amended at 49 FR 36074, Sept. 14, 1984]

§ 1033.31 Other reports.

(a) Each producer-handler shall report to the market administrator at such time and in such manner as the market administrator may prescribe.

(b) Each handler who operates an other order plant shall report total receipts and utilization or disposition of skim milk and butterfat at the plant at such time and in such manner as the market administrator may require and shall allow verification of such reports by the market administrator.

(c) On or before the 26th day of the month, each handler who receives milk from a producer and does not make payment to such producer shall report the following information to the market administrator with respect to the receipts of milk by such handler during the first 15 days of the month:

(1) The identity of each such producer from whom milk was received;

(2) The total pounds of producer milk received from such producer;

(3) The amount and nature of any deductions, as authorized by the producer, to be made from the partial payment for such milk;

(4) The total pounds of milk received from a handler described in § 1033.16(c); and

(5) The total pounds of skim milk and butterfat in bulk fluid milk products received from a pool plant operated by a cooperative association.

(d) On or before the 26th day of the month, each handler who receives milk from a producer and makes payment to such producer, shall report the following information to the market administrator with respect to the receipts of milk by such handler during the first 15 days of the month:

(1) The total pounds of producer milk received from such producers;

(2) The total deductions authorized by such producers to be made from the partial payments for such milk;

(3) The total pounds of milk received from a handler described in § 1033.16(c); and

(4) The total pounds of skim milk and butterfat in bulk fluid milk products received from a pool plant operated by a cooperative association.

(e) On or before the 6th day after the end of the month, each handler who receives milk from a producer and does not make payment to such producer shall report to the market administrator the following information with respect to the receipts of milk by such handler during such month:

(1) The identity of each producer from whom milk was received;

(2) The total pounds of producer milk received from such producer and its average butterfat content;

(3) The amount and nature of any deductions, as authorized by the producer, to be made from the final payment for such milk;

(4) The total pounds of skim milk and butterfat received from a handler described in § 1033.16(c); and

(5) The total pounds of skim milk and butterfat in bulk fluid milk products received from a pool plant operated by a cooperative association.

(f) On or before the second day prior to the reporting dates specified in paragraphs (c) and (e) of this section, each cooperative association that operates a pool plant from which bulk fluid milk products were transferred or diverted to another pool plant within the time periods described in paragraphs (c) and (e) of this section shall report to each such pool plant operator and the market administrator the name and location of each transferor-plant and the total pounds and butterfat content of the bulk fluid milk products transferred or diverted from each such plant.

(g) In addition to the reports required pursuant to paragraphs (a) through (f) of this section and §§ 1033.30 and 1033.32, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

[40 FR 27464, June 30, 1975, as amended at 49 FR 36074, Sept. 14, 1984]

§ 1033.32 Payroll reports.

(a) On or before the 20th day after the end of the month, each handler who elects to pay producers pursuant to § 1033.72(d) shall report to the market administrator the following information with respect to the handler's partial and final payments for producer milk received during such month:

(1) The identity of the handler and the producer and the month to which the payment applies;

(2) The total pounds and, with respect to final payments, the average butterfat content of the milk for which payment is being made;

(3) The minimum rate of payment required by the order and the rate of payment used if such rate is other than the applicable minimum rate;

(4) The amount and nature of any deductions from the amount otherwise due the producer;

(5) The net amount of payment to the producer; and

(6) The dates such payments were made.

(b) On or before the 20th day after the end of the month, each handler operating a partially regulated distributing plant who elects to make payments pursuant to § 1033.57(a) shall report to the market administrator, in the detail and on forms prescribed by the market administrator, his payroll for such month for dairy farmers from whom he received bottling grade milk. Such payroll shall show for each dairy farmer the total pounds of milk received from him, the average butterfat content thereof, and the rate and net amount of the payment made to such dairy farmer, together with the amount and nature of any deductions involved.

(c) On or before the 22nd day after the end of the month, each cooperative association with respect to the milk of producers shall submit to the market administrator the association's completed producer payroll which shall list the pounds of milk received, the average butterfat content thereof, and the rate and net amount of payment, together with the amount and nature of any deductions involved.

[49 FR 36075, Sept. 14, 1984]

CLASSIFICATION

§ 1033.40 Skim milk and butterfat to be classified.

The skim milk and butterfat required to be reported pursuant to § 1033.30 shall be classified each month in accordance with §§ 1033.41 through 1033.46.

§ 1033.41 Classes of utilization.

Subject to §§ 1033.43 and 1033.44, skim milk and butterfat shall be classified in the following classes:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as provided in paragraphs (b) and (c) of this section. Any fluid milk product that is modified by the addition of nonfat milk solids shall be Class I milk in an amount equal only to the weight of an equal volume of an unmodified product of the same nature and butterfat content; and

(2) Not accounted for as Class II or Class III milk.

(b) *Class II milk.* Except as provided in paragraph (c) of this section, Class II milk shall be all skim milk and butterfat:

(1) Disposed of as fluid cream (including aerated cream and sterilized cream), eggnog, or as mixtures of cream and milk or skim milk containing 10.5 percent or more butterfat;

(2) In packaged inventory at the end of the month of the products listed in paragraph (b)(1) of this section;

(3) Used to produce yogurt, sour cream, sour mixtures (such as dips and dressings), cottage cheese, cottage cheese curd, pancake mixes, and puddings; and

(4) Disposed of in bulk as milk, skim milk, or cream to any commercial food processing establishment (other than a milk or filled milk plant) for the manufacture of packaged food products (other than milk products and filled milk) for consumption off the premises.

(c) *Class III milk.* Class III milk shall be:

(1) Skim milk and butterfat used to produce butter, nonfat dry milk, dry whole milk, dry whey, dry buttermilk, casein, cheese (except cottage cheese and cottage cheese curd), frozen cream, milk shake mixes containing 20 percent or more total solids, frozen desserts, frozen dessert mixes, dietary products and infant formulas in hermetically sealed metal or glass containers, evaporated or condensed milk or skim milk in plain or sweetened form, any product containing six percent or more nonmilk fat (or oil), and any product that contains by weight less than 6.5 percent nonfat milk solids.

(2) Skim milk and butterfat in fluid milk products and products listed in paragraphs (b) (1) and (3) of this section that are dumped, spilled, or disposed of for animal feed;

(3) Skim milk and butterfat in inventory of fluid milk products and bulk cream at the end of the month;

(4) Skim milk in any modified fluid milk product that is in excess of the pounds of skim milk in such product that were classified as Class I milk pursuant to paragraph (a)(1) of this section;

(5) Skim milk and butterfat, respectively, in each pool plant's shrinkage, but not in excess of:

(i) Two percent of producer milk physically received at the plant (except that received from a handler described in § 1033.16(c));

(ii) Plus 1.5 percent of producer milk received from a handler described in § 1033.16(c) and of milk diverted to such plant from another pool plant, except that if the plant operator receiving such milk files notice with the market administrator that he is purchasing such milk on the basis of farm weights, the applicable percentage shall be 2 percent;

(iii) Plus 0.5 percent of producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the other plant purchases such milk on the basis of farm weights, no percentage shall apply;

(iv) Plus 1.5 percent of bulk fluid milk products received by transfer from other pool plants;

(v) Plus 1.5 percent of bulk fluid milk products received from other order plants exclusive of the quantity for which Class II or Class III classification is requested by the operators of both plants;

(vi) Plus 1.5 percent of bulk fluid milk products received from unregulated supply plants exclusive of the quantity for which Class II or Class III classification is requested by the handler; and

(vii) Less 1.5 percent of bulk fluid milk products transferred to other plants;

(6) Skim milk and butterfat, respectively, in shrinkage of other source milk assigned pursuant to § 1033.42(b)(2); and

(7) Skim milk and butterfat, respectively, in shrinkage of milk from producers that is diverted from a pool plant to a nonpool plant by a cooperative association acting as a handler pursuant to § 1033.16(b) or in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1033.16(c), but not in excess of 0.5 percent of the receipts of milk from producers, exclusive of such receipts for which farm weights are used as the basis of receipt at the plant to which delivered.

[40 FR 27464, June 30, 1975, as amended at 40 FR 30087, July 17, 1975; 42 FR 11235, Feb. 28, 1977]

§ 1033.42 Shrinkage.

The market administrator shall:

(a) Compute the total shrinkage of skim milk and butterfat, respectively, at each pool plant; and

(b) If other source milk is received at the pool plant, shrinkage at such plant shall be prorated between:

(1) Skim milk and butterfat, respectively, in the receipts used in the computations pursuant to § 1033.41(c)(5); and

(2) Skim milk and butterfat, respectively, in other source milk in bulk fluid form, exclusive of that specified in § 1033.41(c)(5).

§ 1033.43 Interplant movements.

Skim milk or butterfat in the form of a fluid milk product or bulk cream shall be classified:

(a) At the utilization indicated by the operators of both plants, otherwise as Class I milk, if transferred or diverted from a pool plant to another pool plant, subject to the following conditions:

(1) The skim milk or butterfat so assigned to each class shall be limited to the amount thereof remaining in such class in the transferee plant after the computations pursuant to § 1033.46(a)(12) and the corresponding step of § 1033.46(b);

(2) If the transferor plant received during the month other source milk to be allocated pursuant to § 1033.46(a)(6) and the corresponding step of § 1033.46(b), the skim milk and butterfat so transferred or diverted shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor handler received during the month other source milk to be allocated pursuant to § 1033.46(a)(11) or (12) and the corre-

sponding steps of § 1033.46(b), the skim milk and butterfat so transferred or diverted up to the total of such receipts shall not be classified as Class I milk to a greater extent than would be applicable to a like quantity of such other source milk received at the transferee plant; and

(4) Skim milk and butterfat transferred or diverted in bulk to a pool supply plant from another pool plant shall be assigned in sequence beginning with Class III to the milk remaining in each class at the transferee plant after the computations pursuant to § 1033.46(a)(12) and the corresponding step of § 1033.46(b);

(b) As Class I milk, if transferred from a pool plant to a producer-handler plant;

(c) As Class I milk, if transferred as packaged fluid milk products to a nonpool plant that is not an other order plant or a producer-handler plant;

(d) As Class I milk, if transferred or diverted in bulk to a nonpool plant that is neither an other order plant nor a producer-handler plant, unless the requirements of paragraphs (d)(1) and (2) of this section are met, in which case the skim milk and butterfat so transferred or diverted shall be classified in accordance with the assignment resulting from paragraph (d)(3) of this section.

(1) The transferring or diverting handler claims classification pursuant to the assignment set forth in paragraph (d)(3) of this section in his report submitted to the market administrator pursuant to § 1033.30 for the month within which such transaction occurred;

(2) The operator of such nonpool plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for the purpose of verification; and

(3) The skim milk and butterfat so transferred or diverted shall be classified on the basis of the following assignment of utilization at such nonpool plant in excess of receipts of packaged fluid milk products from all pool plants and other order plants:

(i) Any route disposition in the marketing area shall be first assigned to the skim milk and butterfat in the fluid milk products so transferred or diverted from pool plants, next pro rata to such receipts from other order plants, and thereafter to receipts from dairy farmers who the market administrator determines constitute regular sources of supply of bottling grade milk for such nonpool plant;

(ii) Any route disposition in the marketing area of another order issued pursuant to the Act shall be first assigned to receipts of fluid milk products from plants fully regulated by such order, next pro rata to such receipts from pool plants and other order plants not regulated by such order, and thereafter to receipts from dairy farmers who the market administrator determines constitute regular sources of supply of bottling grade milk for such nonpool plant;

(iii) Class I utilization (exclusive of that resulting from transfers of milk to pool plants and other order plants) in excess of that assigned pursuant to paragraphs (d)(3) (i) and (ii) of this section shall be assigned first to remaining receipts from dairy farmers who the market administrator determines constitute regular sources of supply of bottling grade milk for such nonpool plant, and any remaining Class I utilization (including that resulting from transfers of milk to pool plants and other order plants) shall be assigned pro rata to unassigned receipts at such nonpool plant from all pool plants and other order plants; and

(iv) To the extent that Class I utilization is not so assigned to it, the skim milk and butterfat so transferred or diverted shall be classified as Class II milk to the extent that Class II utilization is available and the remainder as Class III milk; and

(e) As follows, if transferred or diverted to an other order plant in excess of receipts from such plant in the same category as described in paragraph (e)(1), (2), or (3) of this section:

(1) If transferred in packaged form, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred or diverted in bulk form, classification shall be in the

classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (e)(3) of this section);

(3) If the operators of both the transferor and transferee plants so request in the reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class III milk to the extent of the Class III utilization (or comparable utilization under such other order) available for such assignment pursuant to the allocation provisions of the transferee order;

(4) If information concerning the classification to which allocated under the other order is not available to the market administrator for purposes of establishing classification pursuant to this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the transferee order provides for only two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk and butterfat allocated to the other class shall be classified as Class III milk; and

(6) If the form in which any fluid milk product transferred to another order plant is not defined as a fluid milk product under such other order, classification shall be in accordance with the provisions of § 1033.41.

§ 1033.45 Computation of skim milk and butterfat in each class.

For each month, the market administrator shall correct for mathematical and other obvious errors all reports submitted pursuant to § 1033.30 and shall compute for each handler the pounds of skim milk and butterfat in each class, subject to the following conditions:

(a) The skim milk contained in any product utilized, produced, or disposed of by a handler during the month shall be considered to be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids;

(b) If a handler with two or more pool plants has no fluid milk products to be assigned under § 1033.46(a) (11) or (12) and the corresponding steps of § 1033.46(b), allocations under § 1033.46 shall be determined separately for each of his pool plants. Otherwise, the market administrator shall combine the receipts and utilization in each of the respective classes at all pool plants of such handler for purposes of § 1033.46; and

(c) The classification, allocation, and pool obligation with respect to producer milk for which a cooperative association is the handler pursuant to § 1033.16 (b) and (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

(d) Bulk fluid milk products transferred or diverted from a pool plant operated by a cooperative association to another pool plant shall be classified in accordance with the rules set forth in § 1033.43(a) and the value thereof at class prices (applicable at the location of the transferee-plant) shall be used to compute the receiving handler's pool obligation for such milk pursuant to § 1033.60.

[40 FR 27464, June 30, 1975, as amended at 49 FR 36075, Sept. 14, 1984]

§ 1033.46 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 1033.45, the market administrator shall determine the classification of producer milk for each handler (or each pool plant, if applicable) as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk classified as Class III milk pursuant to § 1033.41(c)(5);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers under this or any other order issued pursuant to the Act is classified and priced as Class I milk and is not used

as an offset on any other payment obligation under this or any other order;

(3) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to paragraph (a)(6)(v) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in packaged products listed in § 1033.41(b)(1) that are received from other plants or in inventory at the beginning of the month;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a product described in § 1033.41(b)(1)) that is used to produce, or added to, any product specified in § 1033.41(b), but not in excess of the pounds of skim milk remaining in Class II;

(6) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product or bulk cream that was not subtracted pursuant to paragraph (a)(5) of this section;

(ii) Receipts of fluid milk products (except filled milk) and bulk cream for which bottling grade certification is not established and receipts of fluid milk products and bulk cream from unidentified sources;

(iii) Receipts of fluid milk products and bulk cream from a producer-handler, as defined under this or any other Federal order;

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants that were not subtracted pursuant to paragraph (a)(2) of this section; and

(v) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor plant;

(7) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in bulk cream received from nonpool plants that were not subtracted pursuant to paragraph (a)(6)(iii) of this section;

(8) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II and Class III (beginning with Class III) but not in excess of such quantity:

(i) Receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2) and (6)(iv) of this section:

(*a*) For which the handler requests Class III classification; or

(*b*) Which are in excess of the pounds of skim milk determined by multiplying the pounds of skim milk remaining in Class I milk by 1.25 and subtracting the sum of the pounds of skim milk in producer milk, receipts of fluid milk products from other pool handlers, and receipts of fluid milk products in bulk from other order plants that were not subtracted pursuant to paragraph (a)(6)(v) of this section; and

(ii) Receipts of fluid milk products in bulk from an other order plant that were not subtracted pursuant to paragraph (a)(6)(v) of this section, in excess of similar transfers to such plant, if Class III classification was requested by the operator of such plant and the handler;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in inventory of fluid milk products and bulk cream at the beginning of the month;

(10) Add to the remaining pounds of skim milk in Class III the pounds subtracted pursuant to paragraph (a)(1) of this section;

(11) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants that were not subtracted pursu-

ant to paragraphs (a)(2), (6)(iv), and (8)(i) of this section;

(12) Subtract from the pounds of skim milk remaining in each class, in the following order, the pounds of skim milk in receipts of fluid milk products in bulk from another order plant that are in excess of similar transfers to the same plant and that were not subtracted pursuant to paragraphs (a)(6)(v) and (8)(ii) of this section:

(i) In series beginning with Class III, the pounds determined by multiplying the pounds of such receipts by the larger of the percentage of estimated Class II and Class III utilization of skim milk announced for the month by the market administrator pursuant to § 1033.27(m) or the percentage that the Class II and Class III utilization remaining is of the total remaining utilization of skim milk of the handler; and

(ii) From Class I, the remainder of such receipts;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products and bulk cream received from other pool plants according to the classification of such products pursuant to § 1033.43(a); and

(14) If the pounds of skim milk remaining exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) Combine the amounts of skim milk and butterfat determined pursuant to paragraphs (a) and (b) of this section into one total for each class and determine the weighted average butterfat content of producer milk in each class.

[40 FR 27464, June 30, 1975, as amended at 40 FR 30087, July 17, 1975]

MINIMUM PRICES

§ 1033.50 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1033.51 Class prices.

Subject to the provisions of § 1033.53, the class prices per hundredweight for the month shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.70.

(b) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the proceeding month. The tentative Class II price shall be the basic Class II formula price computed pursuant to § 1033.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, except that in no event shall the final Class II price be less than the Class III price: *Provided,* That for the first month this paragraph is effective the Class II price shall be the basic formula price for the month plus 10 cents.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1033.50 and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1033.51a.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

[40 FR 27464, June 30, 1975, as amended at 40 FR 30087, July 17, 1975; 47 FR 42968, Sept. 30, 1982]

§ 1033.51a Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1033.50 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section.

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1033.21 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following subparagraphs is of the total of the data represented in paragraphs (c)(1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Statistical Reporting Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese, and

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Statistical Reporting Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

[47 FR 42968, Sept. 30, 1982]

§ 1033.52 [Reserved]

§ 1033.53 Plant location adjustments for handlers.

(a) For milk received at a plant from producers that is classified as Class I milk without movement in bulk form to a pool distributing plant at which a higher Class I price applies, the price specified in § 1033.51(a) shall be adjusted on the basis of where the plant receiving the milk is located, as follows:

(1) At a plant located in one of the zones set forth in § 1033.6, the adjustment shall be as follows:

Zone	Adjustment per hundredweight
Northwestern zone	Minus 5 cents
Central zone	No adjustment
Southeastern zone	Plus 5 cents

(2) At a plant located outside the marketing area and 60 miles or less from the city hall of the nearest city listed herein, the adjustment shall be the adjustment applicable at Cincinnati, Coshocton, Dayton, Lima, Marietta or Toledo, Ohio; Ashland or Maysville, Kentucky; or Beckley or Charleston, West Virginia; whichever city is nearest;

(3) At a plant located outside the marketing area and more than 60 miles from the city hall of the nearest city listed in paragraph (a)(2) of this section, the adjustment shall be the adjustment applicable at the nearest city, less 11 cents and less an additional 1.5 cents for each 10 miles or fraction thereof in excess of 70 miles that such plant is located from the city hall [illegible] the nearest city listed above. However, no minus location adjustment shall apply at any plant located in the Louisville-Lexington-Evansville marketing area under Part 1046 of this chapter or east of the Mississippi River and south of the northern boundary of Kentucky, West Virginia or Virginia; and

(4) For the purpose of computing location adjustments pursuant to this section, distances shall be measured by the shortest hard-surfaced highway distance as determined by the market administrator.

(b) For the purpose of determining the quantity of Class I producer milk on which a location adjustment shall apply under paragraph (a) of this section, the quantity of fluid milk products transferred as Class I milk from pool plants to a pool distributing plant at which the Class I price is greater than the Class I price at the transferor plant shall be assigned pro rata with the receipts of producer milk at the transferee plant to the Class I milk remaining at such transferee plant after the assignments pursuant to § 1033.46(a) (1) through (12) and the corresponding steps of § 1033.46(b). The Class I utilization so assigned to the transferred fluid milk products then shall be allocated first to receipts from plants at which the Class I price is not less than the Class I price at the transferee plant, and then to receipts from plants with lower Class I prices, in sequence beginning with the plant having the highest Class I price.

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section.

[40 FR 27464, June 30, 1975, as amended at 49 FR 36075, Sept. 14, 1984]

§ 1033.54 Use of equivalent prices.

If for any reason a price quotation or factor required by this part for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price or factor determined by the Secretary to be equivalent to the price or factor that is required.

APPLICATION OF PROVISIONS

§ 1033.56 Plants subject to other Federal orders.

(a) Except as specified in § 1033.31 and in paragraph (b) of this section, the provisions of this part shall not apply to a distributing plant or a supply plant during any month in which the milk at such plant would be subject to the classification and pricing provisions of another order issued pursuant to the Act, unless the plant is qualified as a pool plant pursuant to

§ 1033.12 during the current month and the immediately preceding month and a greater volume of fluid milk products, except filled milk, is disposed of in each such month from such plant as route disposition in the Ohio Valley marketing area and to pool plants qualified on the basis of route disposition in the Ohio Valley marketing area than is disposed of from such plant as route disposition in the marketing area regulated pursuant to the other order and to plants qualified as fully regulated plants under such other order on the basis of route disposition in its marketing area.

(b) Each handler operating a distributing plant described in paragraph (a) of this section, that is regulated under an order providing for individual handler pooling shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of as route disposition in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant as route disposition in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to the route disposition in each marketing area; and

(2) Compute the value of the quantity of reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area at the Class I price under this part applicable at the location of the other order plant (not to be less than the Class III price) and subtract its value at the Class III price.

[40 FR 27464, June 30, 1975, as amended at 41 FR 36806, Sept. 1, 1976]

§ 1033.57 Obligation of handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month either of the amounts (at the handler's election) calculated pursuant to paragraph (a) or (b) of this section. If the handler fails to report pursuant to §§ 1033.30(c) and 1033.32(b) the information necessary to compute the amount specified in paragraph (a) of this section, he shall pay the amount computed pursuant to paragraph (b) of this section:

(a) An amount computed as follows:

(1)(i) The obligation that would have been computed pursuant to § 1033.60 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II or Class III milk if allocated to such class at the pool plant or other order plant and be valued at the weighted average price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class III price. No obligation shall apply to Class I milk transferred to a pool plant or an other order plant if such Class I utilization is assigned to receipts at the partially regulated distributing plant from pool plants and other order plants at which such milk was classified and priced as Class I milk. There shall be included in the obligation so computed a charge in the amount specified in § 1033.60(g) and a credit in the amount specified in § 1033.71(b) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class III price, unless an obligation with respect to such plant is computed as specified below in paragraph (a)(1)(ii) of this section.

(ii) If the operator of the partially regulated distributing plant so requests, and provides with his reports pursuant to §§ 1033.30(c) and 1033.32(b) similar reports for each nonpool plant which serves as a supply plant for such partially regulated distributing plant by shipments to such plant during the month equivalent to the requirements of § 1033.12(b), with agreement of the operator of such plant that the market administrator may examine the books and records of such plant for purposes of verification of such reports, there will be added the amount of the obligation computed at such nonpool supply plant in the same manner and subject to the same conditions as for the partially regulated distributing plant.

(2) From this obligation deduct the sum of:

(i) The gross payments made by such handler for bottling grade milk (adjusted to a 3.5 percent butterfat basis pursuant to § 1033.73) received during the month from dairy farmers at such plant and like payments made by the operator of a supply plant(s) included in the computations pursuant to paragraph (a)(1) of this section; and

(ii) Payments to the producer-settlement fund of another order issued pursuant to the Act under which such plant is also a partially regulated distributing plant.

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat in the plant's route disposition in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received at the plant:

(i) As Class I milk from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act; and

(ii) From a nonpool plant that is not an other order plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such nonpool plant by handlers under this or any other order issued pursuant to the Act is classified and priced as Class I milk and is not used as an offset on any other payment obligation under this or any other order;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of as route disposition in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant (not to be less than the Class III price) subtract its value at the weighted average price applicable at such location (not to be less than the Class III price), and add for the quantity of reconstituted skim milk specified in paragraph (b)(3) of this section its value computed at the Class I price applicable at the location of the nonpool plant (not to be less than the Class III price) less the value of such skim milk at the Class III price.

[40 FR 27464, June 30, 1975; 40 FR 30087, July 17, 1975, as amended at 49 FR 36076, Sept. 14, 1984]

COMPUTATION OF UNIFORM PRICE

§ 1033.60 Computation of the net pool obligation of each handler.

The net pool obligation of each handler described in § 1033.16(a), (b), and (c) for each month shall be a sum of money computed by the market administrator as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1033.46(c) and the pounds of bulk fluid milk products received from a pool plant operated by a cooperative association pursuant to § 1033.45(d) in each class as determined pursuant to § 1033.43(a) by the applicable class price and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage deducted from each class pursuant to § 1033.46(a)(14) and the corresponding step of § 1033.46(b) by the applicable class price, as adjusted by the butterfat differential specified in § 1033.73;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I or Class II price for the current month, as the case may be, by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1033.46(a)(9) and the corresponding step of § 1033.46(b);

(d) [Reserved]

(e) For the first month that this paragraph is effective subtract the amount obtained from multiplying the difference between the applicable

Class I and Class III prices for the preceding month by the hundredweight of skim milk and butterfat in any fluid milk product that was in the plant's inventory at the end of the preceding month and classified as Class I milk.

(f) Add the amount obtained from multiplying the difference between the Class I price at the pool plant and the Class III price, both for the current month, by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1033.46(a)(6) and (7) and the corresponding steps of § 1033.46(b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1033.46(a)(6)(iv) and (v) and the corresponding steps of § 1033.46(b)(6) the Class I price shall be adjusted to the location of the transferor plant (but not to be less than the Class III price); and

(g) Add the amount obtained from multiplying the Class I price adjusted for the location of the nearest unregulated supply plants from which an equivalent volume was received, but not to be less than the Class III price, by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1033.46(a)(11) and the corresponding step of § 1033.46(b), excluding such skim milk or butterfat in bulk receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers under this or any other order issued pursuant to the Act is classified and priced as Class I milk and is not used as an offset on any other payment obligation under this or any other order.

(h) With respect to milk marketed on and after the effective date of this amendatory action through July 1983, subtract an amount determined by multiplying the pounds of producer milk used to make butter, nonfat dry milk and cheese (except cottage cheese and cottage cheese curd) by 40 cents per hundredweight.

[40 FR 27464, June 30, 1975, as amended at 42 FR 11235, Feb. 28, 1977; 48 FR 24863, June 3, 1983; 49 FR 36076, Sept. 14, 1984]

§ 1033.61 Computation of the uniform price.

For each month the market administrator shall compute the uniform price per hundredweight as follows:

(a) Combine into one total the values computed pursuant to § 1033.60 for all handlers who filed the reports prescribed by § 1033.30 for the month and who made the payments required pursuant to § 1033.71 for the preceding month;

(b) [Reserved]

(c) Add an amount equal to the total value of the minus location differentials computed pursuant to § 1033.74(a);

(d) Subtract an amount equal to the total value of the plus location differentials computed pursuant to § 1033.74(a);

(e) Add an amount representing not less than one-half of the unobligated balance in the producer-settlement fund;

(f) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1033.60(g);

(g) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "weighted average price", and, shall be the "uniform price" for milk received from producers at plants located in the Central Zone.

[40 FR 27464, June 30, 1975, as amended at 49 FR 7353, Feb. 29, 1984]

PAYMENTS FOR MILK

§ 1033.70 Producer-settlement fund.

The market administrator shall maintain a separate fund, known as the "producer-settlement fund", which shall function as follows:

(a) All payments made by handlers pursuant to §§ 1033.56(b), 1033.57, 1033.71, and 1033.77 shall be deposited in this fund, and all payments made pursuant to §§ 1033.72 and 1033.77 shall be made out of this fund;

(b) [Reserved]

(c) The difference between the amount added pursuant to § 1033.61(e) and the amount resulting from the subtraction pursuant to § 1033.61(g) shall be deposited in, or withdrawn from, this fund, as the case may be.

[40 FR 27464, June 30, 1975, as amended at 49 FR 7353, Feb. 29, 1984]

§ 1033.71 Payments to the market administrator.

(a) Subject to paragraph (c) of this section, each handler shall pay to the market administrator on or before the 26th day of each month an amount determined by multiplying the hundredweight of producer milk and bulk fluid milk products from a pool plant operated by a cooperative association received by such handler during the first 15 days of the month by the basic formula price for the preceding month less proper deductions and charges authorized in writing by such producers.

(b) Subject to paragraph (c) of this section, each handler shall pay to the market administrator on or before the 15th day after the end of each month the value of such handler's milk pursuant to § 1033.60(a) adjusted by the butterfat differential specified in § 1033.73 plus the amounts computed pursuant to § 1033.60 (b) through (g), less:

(1) The amount obtained from multiplying the weighted average price applicable at the location of the plants from which the other source milk is received (not to be less than the Class III price) by the hundredweight of other source milk for which a value is computed pursuant to § 1033.60(g);

(2) Partial payments made pursuant to paragraph (a) of this section for such month; and

(3) Proper deductions and charges authorized in writing by producers from whom the handler received milk, except that the total deductions and charges made under this section for the month for each producer shall not be greater than the total value of the milk received from such producer during the month.

(c) The following conditions shall apply with respect to the payments prescribed in paragraphs (a) and (b) of this section:

(1) Payments to the market administrator shall be deemed not to have been made until such payments have been received by the market administrator;

(2) If the date by which payments must be received by the market administrator falls on a Saturday or Sunday or any day that is a national holiday, payments shall be considered to have been received by the due date if they are received not later than the next day on which the market administrator's office is open for public business; and

(3) Payments due the market administrator from a cooperative association as a handler may be offset by payments determined by the market administrator to be due the cooperative association pursuant to § 1033.72.

[49 FR 36076, Sept. 14, 1984]

§ 1033.72 Payment to producers and to cooperative associations.

(a) On or before the 28th day of the month, the market administrator shall make payment, subject to paragraphs (c) and (d) of this section, to each producer for milk received from such individual producer and to each cooperative association for bulk fluid milk products delivered from its pool plant to another pool plant during the first 15 days of the month by handlers from whom the appropriate payments have been received pursuant to § 1033.71(a) at a rate per hundredweight equal to the basic formula price for the preceding month, less the deductions authorized in writing by producers and charges made by handlers with respect to such milk.

(b) On or before the 17th day after the end of the month, the market administrator shall make payment, subject to paragraphs (c) and (d) of this section, to each producer for milk received from such individual producer and to each cooperative association for bulk fluid milk products delivered from its pool plant to another pool plant during the month by handlers from whom the appropriate payments have been received pursuant to § 1033.71(b) at the uniform price per hundredweight as adjusted pursuant to §§ 1033.73 and 1033.74 less:

(1) Partial payments made pursuant to paragraph (a) of this section with respect to such milk;

(2) Deductions for marketing services pursuant to § 1033.75; and

(3) Other deductions authorized in writing by producers and made by handlers with respect to such milk.

(c) In lieu of making payments to individual producers pursuant to paragraphs (a) and (b) of this section, the market administrator shall pay, on or before the day prior to the dates specified in such paragraphs, to each cooperative association that so requests with respect to those producers for whom it markets milk and who are certified to the market administrator as having authorized the cooperative association to receive such payment an amount equal to the sum of the individual payments otherwise payable to such producers pursuant to paragraphs (a) and (b) of this section.

(d) In lieu of making payments to individual producers pursuant to paragraphs (a) and (b) of this section, the market administrator shall pay, on or before the day prior to the dates specified in such paragraphs, to each handler who so requests for milk received by the handler from producers for whom a cooperative association is not collecting payments pursuant to paragraph (c) of this section an amount equal to the sum of the individual payments otherwise payable to such producers pursuant to paragraphs (a) and (b) of this section. The handler then shall pay the individual producers the amounts due them by the respective dates specified in paragraphs (a) and (b) of this section. Any handler who the market administrator determines is or was delinquent with respect to any payment obligation under this order shall not be eligible to participate in this payment arrangement until the handler has met all prescribed payment obligations for three consecutive months. In making payments to the individual producers pursuant to this paragraph, the handler shall furnish the following information to each producer:

(1) The identity of the handler and the producer and the month to which the payment applies;

(2) The total pounds and, with respect to final payments, the average butterfat content of the milk for which payment is being made;

(3) The minimum rate of payment required by the order and the rate of payment used if it is other than the applicable minimum rate;

(4) The amount and nature of any deductions subtracted from the amount otherwise due the producer; and

(5) The net amount of payment to the producer.

(e) The following conditions shall apply with respect to the payments by the market administrator prescribed in paragraphs (a) through (d) of this section:

(1) If the date by which such payments are to be made falls on a Saturday or Sunday or on any day that is a national holiday, such payments need not be made until the next day on which the market administrator's office is open for public business; and

(2) If the application of § 1033.71(c)(2) of paragraph (e)(1) of this section results in a delay in the partial or final payments by handlers to the market administrator or by the market administrator to producers or cooperative associations, the corresponding partial or final payments prescribed in paragraphs (a) through (d) of this section may be delayed by the same number of days.

(f) If the market administrator does not receive the full payment required of a handler pursuant to § 1033.71, he shall reduce uniformly per hundredweight the payments to producers for milk received by such handler by a total amount not in excess of the amount due from such handler. The market administrator shall complete the payments to producers on or before the next date for making payments pursuant to this section following the date on which the remaining payment is received from such handler.

(g) If the unobligated balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, except those payments due producers as described in paragraph (f) of this section, the market administrator shall reduce uniformly per hundredweight the payments to producers and shall complete such payments on or before the next date for making payments pursuant to this section following the date on which the funds become available.

[49 FR 36076, Sept. 14, 1984]

§ 1033.73 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent at a rate determined by multiplying the Chicago butter price for the month by 0.115.

[40 FR 30087, July 17, 1975]

§ 1033.74 Location differentials to producers and on nonpool milk.

(a) The uniform price for producer milk at a plant outside the Central Zone shall be the Central Zone uniform price adjusted according to the location of the plant at the rates set forth in § 1033.53(a); and

(b) For the purpose of computations pursuant to § 1033.71(b)(1), the weighted average price shall be adjusted at the rate set forth in § 1033.53(a) that is applicable at the location of the nonpool plant from which other source milk was received.

§ 1033.75 Marketing services.

(a) The market administrator, in making payments to each producer pursuant to § 1033.72, shall deduct 6 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to the milk (except a handler's own farm production) of such producer for whom the marketing services set forth in paragraph (b) of this section are not being performed by a cooperative association as determined by the Secretary.

(b) The moneys deducted pursuant to paragraph (a) of this section shall be used by the market administrator to verify or establish weights, samples, and tests of producer milk and to provide producers with market information. Such services shall be performed by the market administrator or by an agent engaged by and responsible to him.

§ 1033.76 Expense of administration.

As a pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) Receipts of producer milk (including such handler's own farm production and milk received from a handler described in § 1033.16(c) but excluding bulk fluid milk products delivered from a pool plant operated by a cooperative association to another pool plant pursuant to § 1033.45(d));

(b) Receipts of bulk fluid milk products from a pool plant operated by a cooperative association pursuant to § 1033.45(d);

(c) Receipts of other source milk allocated to Class I pursuant to § 1033.46(a) (6), (7), and (11) and the corresponding steps of § 1033.46(b), except such other source milk on which no handler obligation applies pursuant to § 1033.60(g); and

(d) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the Class I milk:

(1) Received during the month at such plant from pool plants and other order plants that is not used as an offset under a similar provision of another order issued pursuant to the Act; and

(2) Specified in § 1033.57(b)(2)(ii).

[49 FR 36077, Sept. 14, 1984]

§ 1033.77 Correction of errors.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses adjustments to be made, for any reason, which result in monies due the market administrator from such handler, the market administrator shall promptly notify such handler of any such amount due, and payment thereof shall be made on or before the next date for making payment set forth in the provision under which such error occurred following the fifth day after such notice. Any monies found to be due a handler from the market administrator shall be paid promptly to such handler except that the market administrator shall offset any monies due a handler against monies due from such handler.

§ 1033.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1033.57, 1033.71, 1033.72(d), 1033.76, 1033.77, or 1033.78 shall be increased one (1) percent beginning on the first day after the due date, and on the same day of each succeeding month until such obligation is paid, subject to the following conditions:

(a) Charges on overdue accounts collected pursuant to this section shall be deposited into the administrative assessment fund maintained by the market administrator;

(b) Amounts payable pursuant to this section shall be computed by the market administrator monthly on the unpaid balance (including any unpaid charges previously assessed pursuant to this section) remaining on each overdue obligation on such date; and

(c) Any obligation that was determined at a date later than that prescribed by the order because of a handler's failure to submit a report to the market administrator when due, shall be considered to have been payable by the date it would have been due if the report had been filed when due.

[49 FR 36077, Sept. 14, 1984]

PART 1036—MILK IN THE EASTERN OHIO-WESTERN PENNSYLVANIA MARKETING AREA

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AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

SOURCE: 43 FR 38798, Aug. 31, 1978, unless otherwise noted.

GENERAL PROVISIONS

§ 1036.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1036.2 Eastern Ohio-Western Pennsylvania marketing area.

The "Eastern Ohio-Western Pennsylvania marketing area," hereinafter called the "marketing area," means all the territory within the boundaries of the following geographical units, including all waterfront facilities connected therewith and all territory occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within the listed geographical units:

(a) "Zone 1" includes:

(1) In Ohio:

(i) The following counties in their entirety:

Ashland, Ashtabula, Carroll, Geauga, Harrison, Holmes, Monroe, Portage, Tuscarawas, and Wayne.

(ii) In Guernsey County: The townships of Londonderry, Millwood, and Oxford.

(iii) In Stark County: Sugar Creek Township.

(iv) In Trumbull County: The townships of Bazetta, Bloomfield, Bristol, Champion, Farmington, Fowler, Greene, Gustavus, Hartford, Johnston, Kinsman, Mecca, Mesopotamia, Southington, and Vernon.

(2) In Pennsylvania:

(i) The following counties in their entirety:

Crawford.
Erie.
Venango.

(ii) In Clarion County: The townships of Ashland, Beaver, Licking, Madison, Perry, Piney, Richland, Salem, and Toby.

(b) "Zone 2" includes:

(1) In Ohio:

(i) The following counties in their entirety:

Belmont, Columbiana, Jefferson, Lorain, Mahoning, Medina, and Summit.

(ii) Stark County (except Sugar Creek Township).

(iii) In Trumbull County: The townships of Braceville, Brookfield, Howland, Hubbard, Liberty, Lordstown, Newton, Warren, Weathersfield, and Vienna.

(2) In Pennsylvania:

(i) The following counties in their entirety:

Armstrong.
Beaver.
Butler.
Fayette.
Greene.
Lawrence.
Mercer.
Washington.

(ii) Westmoreland County (except the boroughs of Bolivar, Donegal, Ligonier, New Florence, and Seward and The townships of Cook, Donegal, Fairfield, Ligonier, and St. Clair).

(3) In West Virginia, the following counties in their entirety:

Barbour.
Brooke.
Doddridge.
Hancock.
Harrison.
Lewis.
Marion.
Marshall.
Monongalia.
Ohio.
Preston.
Randolph.
Taylor.
Tucker.
Tyler.
Upshur.
Wetzel.

(c) "Zone 3" includes Cuyahoga and Lake counties, Ohio, in their entirety.

(d) "Zone 4" includes Allegheny County, Pa., in its entirety.

§ 1036.3 Route disposition.

"Route disposition" means a delivery (except to a plant), either directly or through any distribution facility (including disposition from a plant store, vendor, or vending machine), of a fluid milk product classified as Class I pursuant to § 1036.40(a)(1).

§ 1036.4 [Reserved]

§ 1036.5 Distributing plant.

"Distributing plant" means a plant in which fluid milk products approved by a duly constituted health authority for fluid consumption, or filled milk, are processed or packaged and from which there is route disposition in the marketing area during the month.

§ 1036.6 Supply plant.

"Supply plant" means a plant from which a fluid milk product acceptable to a duly constituted health authority, or filled milk, is transferred or diverted during the month to a pool plant.

§ 1036.7 Pool plant.

Except as provided in paragraph (e) of this section, "pool plant" means:

(a) A distributing pool plant that has:

(1) Route disposition, except filled milk, during the month of not less than 50 percent (40 percent for each month of April through August) of the total receipts of fluid milk products, except filled milk, that are approved by a duly constituted health authority for fluid consumption and that are physically received at such plant or diverted as producer milk pursuant to § 1036.13 to plants other than those qualified as pool plants pursuant to this paragraph; and

(2) Route disposition, except filled milk, in the marketing area during the month of not less than 15 percent of the receipts described in paragraph (a)(1) of this section.

(b) A supply plant from which not less than 40 percent during the months of September, October and November and not less than 30 percent in all other months, of the total quantity of milk approved by a duly constituted health authority for fluid consumption that is physically received at such plant from dairy farmers (including milk diverted from the plant as producer milk pursuant to § 1036.13 but excluding milk received as diverted milk) and handlers defined in § 1036.9(c) is transferred or diverted to and physically received in the form of fluid milk products, except filled milk, at pool plants qualified under paragraph (a) of this section or disposed of as route disposition in the marketing area.

(c) A plant that qualified as a pool plant under paragraph (b) of this section on the basis of its transfers and diversions to pool plants (exclusive of its route disposition in the marketing area) in each of the immediately preceding months of September through February shall be a pool plant for the months of March through August unless the milk received at the plant does not continue to meet the requirements of a duly constituted health authority or a written application is filed by the plant operator with the market administrator on or before the first day of any such month requesting that the plant be designated as a nonpool plant for such month and each subsequent month through August during which it would not otherwise qualify as a pool plant.

(d) A plant(s) that is approved by a duly constituted health authority to handle milk for fluid consumption, that is operated by a cooperative association, and from which during the month the quantity of fluid milk products (except filled milk) shipped to pool plants qualified pursuant to paragraph (a) of this section plus the milk physically received at such plants by direct delivery from the farms of producer members of the cooperative association is not less than 65 percent in any month of September through April and not less than 50 percent in any other month of the cooperative association members' producer milk. If the cooperative association operating a plant qualified as a pool plant pursuant to this paragraph files with the market administrator prior to the first day of any month a written request for nonpool status for such plant, the plant shall be a nonpool plant for such month and for each of the next 11 months in which it does not qualify as a pool plant pursuant to paragraph (a), (b) or (c) of this section.

(e) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant; and

(2) A plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act, unless such plant is qualified as a pool plant pursuant to this section and a greater volume of fluid milk products, except filled milk, is disposed of from such plant in this marketing area as route disposition and to pool plants qualified on the basis of route disposition in this marketing area than is disposed of from such plant in the marketing area regulated pursuant to the other order as route disposition and to plants qualified as fully regulated plants under such other order on the basis of route disposition in its marketing area.

EDITORIAL NOTE: In § 1036.7(d), the words "is not less than 65 percent in any month of September through April and not less than 50 percent in any other month" were suspended beginning for the month of September 1985 and continuing until final disposition. See 50 FR 36866, Sept. 10, 1985.

§ 1036.8 Nonpool plant.

"Nonpool plant" means a plant (except a pool plant) which receives milk from dairy farmers or is a milk or filled milk manufacturing, processing, or bottling plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means:

(1) A nonpool plant that is a distributing plant and is not an other order plant or a producer-handler plant; and

(2) An other order plant with respect to its route disposition in the marketing area that is not priced and pooled pursuant to any order issued pursuant to the Act.

(d) "Unregulated supply plant" means:

(1) A nonpool plant that is a supply plant and is not an other order plant or a producer-handler plant; and

(2) An other order plant with respect to fluid milk products which were received at a pool plant from such a plant and which are not priced and pooled pursuant to any order issued pursuant to the Act.

§ 1036.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) Any cooperative association with respect to producer milk which it causes to be diverted for its account from a pool plant of another handler to a nonpool plant;

(c) Any cooperative association with respect to milk of its producer-members which is delivered from the farm to the pool plant of another handler in a tank truck owned and operated by or under contract to such cooperative association. The milk for which a cooperative association is the handler pursuant to this paragraph shall be deemed to have been received at the location of the pool plant to which it was delivered;

(d) Any person in his capacity as the operator of a partially regulated distributing plant;

(e) Any producer-handler; and

(f) Any person in his capacity as the operator of an other order plant that is either a distributing plant or a supply plant.

§ 1036.10 Producer-handler.

"Producer-handler" means any person who:

(a) Operates a dairy farm and a distributing plant;

(b) Receives no fluid milk products from sources other than his own farm production and pool plants;

(c) Uses no milk products other than fluid milk products for reconstitution into fluid milk products, and

(d) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary for his own farm production and the operation of the processing and packaging business are the personal enterprise and risk of such person.

§ 1036.11 [Reserved]

§ 1036.12 Producer.

(a) "Producer" means any person, except a producer-handler as defined in any order (including this part) issued pursuant to the Act, who produces milk for fluid consumption in compliance with the inspection requirements of a duly constituted health authority, which milk is received at a pool plant or diverted pursuant to § 1036.13 from a pool plant to a nonpool plant or another pool plant.

(b) "Producer" shall not include a person with respect to milk that is physically received at a pool plant as diverted milk from an other order plant if a Class II or Class III classification under this order is designated for such milk and it is subject to the pricing and pooling provisions of another order issued pursuant to the Act.

§ 1036.13 Producer milk.

"Producer milk" means the skim milk and butterfat contained in milk of a producer which is:

(a) With respect to a handler defined in § 1036.9(a):

(1) Received at the handler's pool plant directly from the producer, excluding receipts of milk diverted from another pool plant.

(2) Received at the handler's pool plant from a handler defined in § 1036.9(c) that does not operate a pool plant;

(3) Diverted pursuant to paragraphs (e), (f), and (g) of this section for the handler's account from his pool plant to a nonpool plant that is not a producer-handler plant; or

(4) Diverted for the handler's account from his pool plant to another pool plant, subject to the conditions set forth in paragraph (h) of this section;

(b) With respect to a handler defined in § 1036.9(b), diverted pursuant to paragraphs (e), (f), and (g) of this section for the handler's account from a pool plant of another handler to a nonpool plant that is not a producer-handler plant;

(c) With respect to a handler defined in § 1036.9(c) that does not operate a pool plant, received by the handler from the producer's farm in excess of the producer's milk that is received by a pool plant operator pursuant to paragraph (a)(2) of this section; and

(d) With respect to a handler defined in § 1036.9(c) that also operates a pool plant, received by the handler from the producer's farm.

(e) During April through August and subject to the conditions of paragraph (g) of this section, the operator of a pool plant or a cooperative association may divert the milk of a producer without limit.

(f) During September through March and subject to the conditions of paragraph (g) of this section:

(1) The operator of a pool plant that is not a cooperative association may divert any producer milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (f)(2) of this section in accordance with one of the following alternatives:

(i) The milk of an individual producer may be diverted for not more days of production of his producer milk than is physically received at pool plant; or

(ii) The plant operator may divert an aggregate quantity of milk of producers not exceeding 40 percent of the producer milk physically received at such pool plant during the month that is eligible to be diverted by the plant operator.

(2) A cooperative association may divert the milk of a producer during the month in accordance with one of the following alternatives:

(i) The milk of an individual producer may be diverted for not more days of production of his producer milk than is physically received at pool plants; or

(ii) The cooperative association may divert an aggregate quanitty of milk not exceeding 40 percent of the producer milk that the cooperative association causes to be delivered during the month to pool plants.

(g) The following conditions shall apply with respect to milk diverted pursuant to paragraphs (a)(3) and (b) of this section:

(1) Milk of a producer shall not be eligible for diversion unless the milk of such producer was physically received at least once as producer milk at a pool plant and the dairy farmer has continuously retained producer status under the order since that time;

(2) During each month of September through November at least one day's production of milk of a producer must be received at a pool plant for the milk of such producer to be eligible for diversion that month pursuant to paragraphs (f)(1)(ii) and (2)(ii) of this section;

(3) Such milk shall be deemed to have been received by the diverting handler at the location of the nonpool plant to which diverted;

(4) To the extent that it would result in nonpool plant status for the pool plant from which diverted, milk diverted for the account of a cooperative association from the pool plant of another handler shall not be deemed to have been received at such pool plant and shall not be producer milk;

(5) If milk is diverted in excess of the limit by a handler who elects to divert on the basis of days of production, only that milk of the individual producer which was received at a pool plant or which was diverted to a nonpool plant for not more days of production than is physically received at a pool plant shall be considered as producer milk;

(6) If milk is diverted in excess of the percentage limit by a handler who elects to divert on an aggregate basis, eligibility as producer milk shall be forfeited on a quantity of milk equal to such excess;

(7) In cases of excess diversions, the diverting handler shall specify the dairy farmer's deliveries that are ineligible as producer milk. If the handler fails to do so producer milk status shall be forfeited with respect to all milk diverted to nonpool plants by such handler; and

(8) Milk diverted to an other order plant shall be producer milk only if a Class II or Class III classification is designated for such milk pursuant to the provisions of the other order issued pursuant to the Act and such milk is not subject to the pricing and pooling provisions of such order.

(h) Milk diverted from a pool plant to another pool plant shall be deemed to have been received by the diverting handler at the location of the pool plant to which diverted.

EDITORIAL NOTE: In § 1036.12(e), the words "During April through August and" and paragraph (f) in its entirety were suspended beginning for the month of September 1985 and continuing until final disposition. See 50 FR 36866, Sept. 10, 1985.

§ 1036.14 Other source milk.

"Other source milk" means the skim milk and butterfat contained in or represented by:

(a) Fluid milk products and bulk fluid cream products from any source except producer milk, fluid milk products and bulk fluid cream products from pool plants, and fluid milk products and bulk fluid cream products in inventory at the beginning of the month;

(b) Receipts of packaged fluid cream products from other plants;

(c) Products, other than fluid milk products, bulk fluid cream products and Class II products listed in § 1036.40(b)(3), from any source (including those produced at the plant) which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Any disappearance of nonfluid products in a form in which they may be converted into a Class I product and which are not otherwise accounted for.

§ 1036.15 Fluid milk product.

"Fluid milk product" means the following products or mixtures in either fluid or frozen form, including such products or mixtures that are flavored, cultured, modified (with added nonfat milk solids), concentrated, or reconstituted: Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, milk shake mixes containing less than 12 percent total milk solids, and mixtures of cream and milk or skim milk containing less than 10.5 percent butterfat. The term "fluid milk product" shall not include those products and mixtures listed in § 1036.40(b) (1) and (3), and (c)(1).

§ 1036.16 Fluid cream product.

"Fluid cream product" means cream (including aerated cream and sterilized cream) or a mixture of cream and milk or skim milk containing 10.5 percent or more butterfat.

§ 1036.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1036.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines after application by the association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, known as the "Capper-Volstead Act";

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales or marketing milk or its products for its members; and

(c) To have all of its activities under the control of its members.

§ 1036.19 Reload point.

"Reload point" means a location at which milk moved from a farm in a tank truck is transferred to another tank truck and commingled with other milk before entering a plant. A reload operation on the premises of a plant shall be considered a part of the plant operation.

§ 1036.20 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1036.51a:

(a) *Butter price.* "Butter price" means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) *Cheddar cheese price.* "Cheddar cheese price" means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) *Nonfat dry milk price.* "Nonfat dry milk price" means the simple average, for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Division as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding work-day until the day such prices were pre-

viously reported. A work-day is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price.* "Edible whey price" means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

[47 FR 42969, Sept. 30, 1982]

HANDLER REPORTS

§ 1036.30 Reports of receipts and utilization.

On or before the 8th day after the end of each month, reports of receipts and utilization for such month shall be made to the market administrator, in the detail and on forms prescribed by the market administrator, as follows:

(a) Each handler operating a pool plant shall report for each of his pool plants:

(1) Receipts of skim milk and butterfat contained in or represented by:

(i) Producer milk, showing in the case of milk received directly from each producer the pounds and butterfat test and the number of days of production involved for each producer;

(ii) Fluid milk products and fluid cream products from other pool plants and from a handler defined in § 1036.9(c) that also operates a pool plant, and

(iii) Other source milk.

(2) Inventories at the beginning and end of the month of the following products:

(i) Fluid milk products; and

(ii) Fluid cream products, showing separately such inventories in bulk form and in packaged form;

(3) The utilization or disposition of all skim milk and butterfat required to be reported pursuant to this paragraph, showing separately:

(i) Total route disposition and route disposition in the marketing area, showing separately such disposition of filled milk inside and outside the marketing area; and

(ii) Transfers and diversions to other plants; and

(4) Such other information with respect to the receipts and utilization of skim milk and butterfat as the market administrator may prescribe;

(b) Each cooperative association shall report:

(1) The quantities of skim milk and butterfat contained in milk from producers for which it is the handler pursuant to § 1036.9 (b) and (c), showing:

(i) The quantity of milk delivered to each plant; and

(ii) For each producer the pounds and butterfat test of the milk and the number of days of production involved;

(2) The utilization of all skim milk and butterfat required to be reported pursuant to paragraph (b)(1) of this section, except that contained in producer milk described in § 1036.13(a)(2); and

(3) Such other information with respect to its receipts and utilization of skim milk and butterfat as the market administrator may prescribe; and

(c) Each handler operating a partially regulated distributing plant shall report as required in paragraph (a) of this section except that receipts of bottling grade milk from dairy farmers shall be reported in lieu of receipts of producer milk. Such report shall include a separate statement showing the amount of reconstituted skim milk in route disposition in the marketing area.

§ 1036.31 Payroll reports.

(a) On or before the 18th day after the end of each month, each handler who pays producers pursuant to § 1036.73(a) shall report to the market administrator the following information with respect to the handler's partial and final payments for producer milk received during such month:

(1) The identity of the handler and the producer and the month to which the payment applies;

(2) The total pounds and, with respect to final payments, the average butterfat content of the milk for which payment is being made;

(3) The minimum rate of payment required by the order and the rate of payment used if such rate is other than the applicable minimum rate;

(4) The amount and nature of any deductions from the amount otherwise due the producer;

(5) The net amount of payment to the producer; and

(6) The dates such payments were made.

(b) On or before the 20th day after the end of the month, each handler operating a partially regulated distributing plant who elects to make payments pursuant to § 1036.76(a) shall report to the market administrator with respect to milk received from each dairy farmer who would have been a producer if the plant had been fully regulated the following information for such month:

(1) The name of each dairy farmer;

(2) The total pounds of milk received from each dairy farmer;

(3) The average butterfat content of such milk;

(4) The amount and nature of any deductions, as authorized by the dairy farmer, from the payment for such milk; and

(5) The rate of payment per hundredweight and the net amount paid each dairy farmer.

[43 FR 38798, Aug. 31, 1978, as amended at 45 FR 36355, May 30, 1980]

§ 1036.32 Other reports.

(a) On or before the 22nd day of each month each delinquent handler pursuant to § 1036.73(c) shall report to the market administrator the following information with respect to its receipts of milk during the first 15 days of the month:

(1) The identity of each producer from whom milk was received;

(2) The total pounds of producer milk received from such producer;

(3) The amount and nature of any deductions, as authorized by the producer, to be made from the partial payment for such milk;

(4) The total pounds of milk received from a handler described in § 1036.9(c); and

(5) The pounds of skim milk and butterfat in bulk fluid milk products received from a pool plant operated by a cooperative association.

(b) On or before the 22nd day of each month each handler defined in § 1036.9 (a), (b) and (c) except a handler who is required to file reports pursuant to paragraph (a) of this section shall report to the market administrator the following information with respect to its receipts of milk during the first 15 days of the month:

(1) The total pounds of producer milk;

(2) The total deductions as authorized by the producers to be made from the partial payment for such milk;

(3) The total pounds of milk received from a handler described in § 1036.9(c); and

(4) The pounds of skim milk and butterfat in bulk fluid milk products received from a pool plant operated by a cooperative association.

(c) On or before the 8th day after the end of each month, each delinquent handler (pursuant to § 1036.73(c)), shall report to the market administrator the following information with respect to receipts of milk during such month.

(1) The identity of each producer from whom milk was received.

(2) The total pounds of producer milk received from such producer and its average butterfat content;

(3) The amount and nature of any deductions, as authorized by the producer, to be made from the final payment for such milk;

(4) The total pounds of skim milk and butterfat received from a handler described in § 1036.9(c); and

(5) The pounds of skim milk and butterfat in bulk fluid milk products

received from a pool plant operated by a cooperative association.

(d) On or before the second day prior to the reporting dates specified in paragraphs (a) and (c) of this section, each cooperative association that operates a pool plant from which bulk fluid milk products were transferred or diverted to pool plants of other handlers within the time periods described in paragraphs (a) and (c) of this section shall report to each such pool plant operator and the market administrator the name and location of the transferor-plant and the total pounds and butterfat content of the bulk fluid milk products transferred or diverted from the plant.

(e) In addition to the reports required pursuant to paragraphs (a) through (d) of this section and §§ 1036.30 and 1036.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

(f) Each producer-handler shall report to the market administrator at such time and in such manner as the market administrator may prescribe.

(g) Each handler who operates another order plant shall report total receipts and utilization or disposition of skim milk and butterfat at the plant at such time and in such manner as the market administrator may require and shall allow verification of such reports by the market administrator.

[43 FR 38798, Aug. 31, 1978, as amended at 45 FR 36355, May 30, 1980]

CLASSIFICATION OF MILK

§ 1036.40 Classes of utilization.

Except as provided in § 1036.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1036.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as provided in paragraphs (b) and (c) of this section; and

(2) Not accounted for as Class II or Class III milk.

(b) *Class II milk.* Except as provided in paragraph (c) of this section, Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product;

(2) In inventory at the end of the month of packaged fluid cream products;

(3) Used to produced yogurt, sour cream, sour cream products (e.g., dips), cottage cheese, and cottage cheese curd; and

(4) Disposed of in bulk as fluid milk products or fluid cream products to any commercial food processing establishment (other than a milk or filled milk plant) for the manufacture of packaged food products (other than milk products and filled milk) for consumption off the premises.

(c) *Class III milk.* Class III milk shall be:

(1) Skim milk and butterfat used to produce frozen desserts and frozen dessert mixes, eggnog, frozen cream, butter, cheese (excluding cottage cheese and cottage cheese curd), evaporated and condensed milk (plain or sweetened), nonfat dry milk, dry whole milk, dry whey, condensed or dry buttermilk, any product containing 6 percent or more nonmilk fat (or oil), milk shake mixes containing 12 percent or more total milk solids, and sterilized products (except fluid cream products and those products listed in paragraph (b)(3) of this section) in hermitically sealed glass or metal containers;

(2) Skim milk and butterfat in fluid milk products, fluid cream products and products listed in paragraph (b)(3) of this section that are disposed of by a handler for livestock feed;

(3) Skim milk and butterfat in fluid milk products, fluid cream products and products listed in paragraph (b)(3) of this section that are dumped by a handler after notification to, and opportunity for verification by, the market administrator;

(4) Skim milk and butterfat in inventory of fluid milk products and bulk fluid cream products at the end of the month;

(5) Skim milk represented by the nonfat milk solids added to a fluid milk product which is in excess of an equivalent volume of such product prior to the addition;

(6) Skim milk and butterfat, respectively, in each pool plant's shrinkage, but not in excess of:

(i) Two percent of producer milk physically received at the plant (except that received from a handler defined in § 1036.9(c));

(ii) Plus 1.5 percent of milk received from a handler defined in § 1036.9(c) and of milk diverted to such plant from another pool plant, except that if the plant operator receiving such milk files notice with the market administrator that he is purchasing such milk on the basis of farm weights, the applicable percentage shall be 2 percent;

(iii) Plus 0.5 percent of producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the other plant purchases such milk on the basis of farm weights, no percentage shall apply;

(iv) Plus 1.5 percent of bulk fluid milk products received by transfer from other pool plants;

(v) Plus 1.5 percent of bulk fluid milk products received from other order plants exclusive of the quantity for which Class II or Class III classification was requested by the operators of both plants;

(vi) Plus 1.5 percent of bulk fluid milk products received from unregulated supply plants exclusive of the quantity for which Class II or Class III classification is requested by the handler; and

(vii) Less 1.5 percent of the quantity of bulk fluid milk products transferred to other plants that does not exceed such quantity to which percentages were applied pursuant to paragraphs (c)(6) (i), (ii), (iv), (v), and (vi) of this section;

(7) Skim milk and butterfat, respectively, in shrinkage of other source milk assigned pursuant to § 1036.41(b)(2); and

(8) Skim milk and butterfat, respectively, in shrinkage of milk from producers that is diverted from a pool plant to a non pool plant by a cooperative association acting as a handler pursuant to § 1036.9(b) or in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1036.9(c), but not in excess of 0.5 percent of the receipts of milk from producers, exclusive of such receipts for which farm weights are used as the basis of receipt at the plant to which delivered.

§ 1036.41 Shrinkage.

The market administrator shall allocate shrinkage over each pool plant's receipts as follows:

(a) Compute the total shrinkage of skim milk and butterfat, respectively, for each pool plant; and

(b) Prorate the resulting amounts between the receipts of skim milk and butterfat, respectively, in:

(1) The net quantity of producer milk and other fluid milk products specified in § 1036.40(c)(6); and

(2) Other source milk in the form of bulk fluid milk products exclusive of that specified in § 1036.40(c)(6).

§ 1036.42 Classification of transfers and diversions.

Skim milk or butterfat in the form of a fluid milk product or a bulk fluid cream product shall be classified:

(a) At the utilization indicated by the operators of both plants, otherwise as Class I milk, if transferred or diverted from a pool plant to the pool plant of another handler, subject to the following conditions:

(1) The skim milk or butterfat so assigned to each class shall be limited to the amount thereof remaining in such class in the transferee plant after the computations pursuant to § 1036.44(a)(13) and the corresponding step of § 1036.44(b);

(2) If the transferor plant received during the month other source milk to be allocated pursuant to § 1036.44(a)(7) and the corresponding step of § 1036.44(b), the skim milk and butterfat so transferred or diverted shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor plant received during the month other source milk to be allocated pursuant to § 1036.44(a)(12) or (13) and the corresponding steps of § 1036.44(b), the skim milk and butterfat so transferred or diverted up to the total of such receipts shall not be classified as Class I milk

to a greater extent than would be applicable to a like quantity of such other source milk received at the transferee plant;

(b) As Class I milk, if transferred from a pool plant to a producer-handler plant;

(c) As Class I milk, if transferred or diverted in bulk to a nonpool plant that is neither an other order plant nor a producer-handler plant, unless the requirements of paragraphs (c) (1) and (2) of this section are met, in which case the skim milk and butterfat so transferred or diverted shall be classified in accordance with the assignment resulting from paragraph (c)(3) of this section:

(1) The transferring or diverting handler claims classification as Class II or Class III in his report submitted pursuant to § 1036.30;

(2) The operator of such nonpool plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for the purpose of verification; and

(3) The skim milk and butterfat so transferred or diverted shall be classified on the basis of the following assignment of utilization at such nonpool plant in excess of receipts of packaged fluid milk products from all pool plants and other order plants:

(i) Any route disposition in the marketing area shall be first assigned to the skim milk and butterfat in the fluid milk products so transferred or diverted from pool plants, next pro rata to receipts from other order plants, and thereafter to receipts from dairy farmers who the market administrator determines constitute regular sources of supply of milk (approved by a duly constituted health authority for fluid consumption) for such nonpool plant;

(ii) Any route disposition in the marketing area of another order issued pursuant to the Act shall be first assigned to receipts from plants fully regulated by such order, next pro rata to receipts from pool plants and other order plants not regulated by such order, and thereafter to receipts from dairy farmers who the market administrator determines constitute regular sources of supply of milk (approved by a duly constituted health authority for fluid consumption) for such nonpool plant;

(iii) Class I utilization exclusive of that resulting from transfers of fluid milk products to pool plants and other order plants in excess of that assigned pursuant to paragraphs (c)(3) (i) and (ii) of this section shall be assigned first to remaining receipts from dairy farmers who the market administrator determines constitute regular sources of supply of milk (approved by a duly constituted health authority for fluid consumption) for such nonpool plant and any remaining Class I utilization (including that resulting from transfers of fluid milk products to pool plants and other order plants) shall be assigned pro rata to unassigned receipts at such nonpool plant from all pool plants and other order plants; and

(iv) To the extent that Class I utilization is not so assigned to it, the skim milk and butterfat so transferred or diverted shall be classified as Class III milk to the extent Class III utilization is available and the remainder as Class II milk; and

(d) As follows, if transferred to an other order plant in excess of receipts from such plant in the same category as described in paragraph (d) (1), (2), or (3) of this section:

(1) If transferred in packaged form, classification shall be in the classes to which allocated as fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (d)(3) of this section);

(3) If the operators of both the transferor and transferee plants so request in the reports of receipts and utilization filed with the respective market administrators, movments in bulk form shall be classified as Class III milk to the extent of the Class III utilization (or comparable utilization under such other order) available for such assignment pursuant to the allocation provisions of the transferee order;

(4) If information concerning the classification to which allocated under the other order is not available to the market administrator for purposes of establishing classification pursuant to this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the transferee order provides for only two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk and skim milk and butterfat allocated to the other class shall be classified as Class III milk; and

(6) If the form in which any fluid milk product is transferred to an other order plant is not defined as a fluid milk product under such other order, classification shall be in accordance with the provisions of § 1036.40.

§ 1036.43 General classification rules.

For each month, the market administrator shall correct for mathematical and other obvious errors all reports submitted pursuant to § 1036.30 and shall compute for each handler the total pounds of skim milk and butterfat in each class: *Provided*, That the skim milk contained in any product utilized, produced or disposed of by the handler during the month shall be considered to be an amount equivalent to the nonfat milk solids contained in such product plus all the water originally associated with such solids.

§ 1036.44 Classification of producer milk.

After making the computations pursuant to § 1036.43, the market administrator shall determine the classification of producer milk for each handler as follows: *Provided*, That the classification of producer milk for which a cooperative association is the handler pursuant to § 1036.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk classified as Class III milk pursuant to § 1036.40(c)(6);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged and fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under this or any other order issued pursuant to the Act is classified and priced as Class I milk and is not used as an offset on any other payment obligation under this or any other order;

(3) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to paragraph (a)(7)(v) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or the quantity associated with such receipts and classified as Class III milk pursuant to § 1036.40(c)(5) plus 2 percent of the remainder of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in packaged fluid cream products received from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in packaged fluid cream products that are in inventory at the beginning of the month, but not in excess of the pounds of skim milk remaining in Class II;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is added to, or used to produce, any product specified in § 1036.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product or a fluid cream product) that was not subtracted pursuant to paragraphs (a)(4) and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) and bulk fluid cream products for which appropriate health approval is not established and receipts of fluid milk products and bulk fluid cream products, from unidentified sources;

(iii) Receipts of fluid milk products and bulk fluid cream products from a producer-handler, as defined under this or any other Federal order;

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants that were not subtracted pursuant to paragraph (a)(2) of this section; and

(v) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor plant.

(8) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in bulk fluid cream products received from nonpool plants that were not subtracted pursuant to paragraph (a)(7)(iii) of this section and in packaged fluid cream products in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) of this section;

(9) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II and Class III (beginning with Class III), but not in excess of such quantities:

(i) Receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2) and (7)(iv) of this section:

(*a*) For which the handler requests Class III classification; or

(*b*) Which are in excess of the pounds of skim milk determined by multiplying the pounds of skim milk remaining in Class I milk by 1.25 and subtracting the sum of the pounds of skim milk in producer milk, receipts from other pool handlers, and receipts in bulk from other order plants that were not subtracted pursuant to paragraph (a)(7)(v) of this section; and

(ii) Receipts of fluid milk products in bulk from an other order plant that were not subtracted pursuant to paragraph (a)(7)(v) of this section, in excess of similar transfers to such plant, if Class III classification was requested by the operator of such plant and the handler;

(10) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in inventory of fluid milk products and bulk fluid cream products;

(11) Add to the remaining pounds of skim milk in Class III the pounds subtracted pursuant to paragraph (a)(1) of this section;

(12) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to paragraphs (a)(2), (7)(iv), and (9)(i) of this section;

(13) Subtract from the pounds of skim milk remaining in each class, in the following order, the pounds of skim milk in receipts of fluid milk products in bulk from an other order plant that are in excess of similar transfers to the same plant and that were not subtracted pursuant to paragraphs (a)(7)(v) and (9)(ii) of this section:

(i) In series beginning with Class III, the pounds determined by multiplying the pounds of such receipts by the larger of the percentage of estimated Class II and Class III utilization of skim milk announced for the month by the market administrator pursuant to § 1036.45(a) or the percentage that Class II and Class III utilization remaining is of the total remaining utilization of skim milk of the handler; and

(ii) From Class I, the remaining pounds of such receipts;

(14) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products and bulk fluid cream products received from pool plants of other handlers according to the classifica-

tion of such products pursuant to § 1036.42(a).

(15) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of milk from a handler defined in § 1036.9(c) that also operates a pool plant.

(16) If the pounds of skim milk remaining exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to § 1036.44(a)(16) and the corresponding step of § 1036.44(b).

§ 1036.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1036.44(a)(13) and the corresponding step of § 1036.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the classification to which such receipts are allocated pursuant to § 1036.44 pursuant to such report, and thereafter any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products and bulk fluid cream products to an other order plant the classification to which the skim milk and butterfat in such fluid milk products and bulk fluid cream products were allocated by the market administrator of the other order on the basis of the report of the receiving handler, and, as necessary, any changes in such classification arising in the verification of such report.

(d) On or before the 20th day of each month, report to each cooperative association that so requests the class utilization of milk received during the preceding month by each handler from producers who are members of such association, prorating to such receipts the class utilization of all producer receipts of such handler.

CLASS PRICES

§ 1036.50 Class prices.

Subject to the provisions of § 1036.52, the class prices per hundredweight for milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The class I price shall be the basic formula price for the second preceding month plus $1.85.

(b) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price computed pursuant to § 1036.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, except that in no event shall the final Class II price be less than the Class III price: *Provided,* That for the first month this paragraph is effective the Class II price shall be the basic formula price for the month plus 10 cents.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the

basic formula prices computed pursuant to § 1036.51 and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1036.51a.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

[43 FR 38798, Aug. 31, 1978, as amended at 47 FR 42969, Sept. 30, 1982]

§ 1036.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92 score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1036.51a Basic Class II formula price.

The "Basic Class II formula price" for the month shall be the basic formula price determined pursuant to paragraphs (a) through (d) of this section:

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1036.20 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factors used under the Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following subparagraphs is of the total of the data represented in paragraphs (c)(1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Statistical Reporting Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(2) Combine the total nonfat dry milk production for the States of Min-

nesota and Wisconsin, as reported by the Statistical Reporting Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

[47 FR 42969, Sept. 30, 1982]

§ 1036.52 Plant location adjustments for handlers.

(a) At a plant in the marketing area and outside Zone 1, the Class I price for producer milk shall be adjusted as follows:

(1) At a plant in Zone 2, the Class I price shall be increased 5 cents;

(2) At a plant in Zone 3, the Class I price shall be increased 8 cents; and

(3) At a plant in Zone 4, the Class I price shall be increased 10 cents.

(b) At a plant outside the marketing area, the Class I price shall be that applicable pursuant to paragraph (a) of this section at the location of the nearest of the cities here listed (Canton and Cleveland, Ohio; Erie, Pittsburgh, and Uniontown, Pa.; and Clarksburg, W. Va.) to such plant. Such Class I price shall be further adjusted by a reduction of 1.5 cents for each 10 miles or fraction thereof that such plant is from the city hall of the nearest of the above named cities. Distances applied pursuant to this paragraph shall be the shortest hard-surfaced highway distances as determined by the market administrator.

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraphs (a) and (b) of this section, except that the adjusted Class I price shall not be less than the Class III price.

(d) For the purpose of computing location adjustments pursuant to paragraph (b) of this section, fluid milk products physically received at a pool plant from other pool plants shall be assigned any remainder of Class I milk at such plant that is in excess of 92.5 percent of the sum of producer milk receipts at the plant and that assigned as Class I to receipts from other order plants and unregulated supply plants. Such assignment shall be made in sequence beginning with receipts from the plant(s) at which the highest Class I price is applicable.

§ 1036.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month and the final Class II price for the preceding month, except that the Class II price announced for the first month during which this section is effective shall be the price specified in the proviso in § 1036.50(b); and on or before the 15th day of each month the tentative Class II price for the following month.

[47 FR 42970, Sept. 30, 1982]

§ 1036.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICE

§ 1036.60 Handler's value of milk for computing uniform price.

The net pool obligation of each handler defined in § 1036.9 (a), (b), and (c) for each month shall be a sum of money computed by the market administrator as follows:

(a) Multiply the quantity of producer milk in each class as computed pursuant to § 1036.44(c) by the applicable class price, adjusted pursuant to § 1036.52;

(b) Add the amounts obtained from multiplying the overage deducted from each class pursuant to § 1036.44(a)(16) and the corresponding step of § 1036.44(b) by the applicable class price adjusted pursuant to §§ 1036.52 and 1036.74;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I or Class II price for the current month, as the case may be, by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1036.44(a)(10) and the corresponding step of § 1036.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price at the pool plant and the Class III price, both for the current month, by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1036.44(a)(7) and (8) and the corresponding steps of § 1036.44(b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1036.44(a)(7)(iv) and (v) and the corresponding steps of § 1036.44(b) the Class I price shall be adjusted to the location of the transferor plant; and

(e) Add the amount obtained from multiplying the Class I price adjusted for the location of the nearest nonpool plants from which an equivalent volume was received by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1036.44(a)(12) and the corresponding step of § 1036.44(b), excluding such skim milk or butterfat in bulk receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under this or any other order issued pursuant to the act is classified and priced as Class I milk and is not used as an offset on any other payment obligation under this or any other order.

(f) With respect to milk marketed on and after the effective date of this amendatory action through July 1983, subtract an amount determined by multiplying the pounds of produced milk used to make butter, nonfat dry milk and cheese (except cottage cheese and cottage cheese curd) by 40 cents per hundredweight.

[43 FR 38798, Aug. 31, 1978, as amended at 48 FR 24864, June 3, 1983]

§ 1036.61 Computation of uniform price (including weighted average price).

For each month the market administrator shall compute a uniform price per hundredweight of milk of 3.5 percent butterfat content received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1036.60 for all handlers who filed the reports prescribed by § 1036.30 for the month and who were not in default of payments to the market administrator pursuant to § 1036.71 for the preceding month;

(b) Deduct the amount of the plus location adjustments and add the amount of the minus location adjustments which are applicable pursuant to § 1036.75;

(c) Add an amount equal to one-half of the unobligated balance in the producer-settlement fund;

(d) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk, and

(2) The total hundredweight for which a value is computed pursuant to § 1036.60(e);

(e) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "weighted average price," and the "uniform price" for milk received from producers.

[45 FR 36355, May 30, 1980, as amended at 49 FR 14298, Apr. 11, 1984; 49 FR 23025, June 4, 1984]

§ 1036.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce on or before:

(a) The fifth day of each month, the butterfat differential for the preceding month; and

(b) The 13th day of each month, the uniform price for the preceding month.

PAYMENTS FOR MILK

§ 1036.70 Producer-settlement fund.

(a) The market administrator shall establish and maintain a separate fund known as the "Producer-settlement fund", into which he shall deposit the payments made by handlers pursuant to §§ 1036.71, 1036.76 and 1036.77 and from which he shall make all payments pursuant to §§ 1036.72, 1036.73 and 1036.77.

[45 FR 36356, May 30, 1980 and 49 FR 14298, Apr. 11, 1984]

§ 1036.71 Payments to the market administrator.

(a) Subject to paragraph (d) of this section, each handler operating a pool plant shall pay to the market administrator on or before the day prior to the last day of each month an amount determined by multiplying the Class III price for the preceding month (adjusted by the butterfat differential, if the handler so elects) by the following receipts during the first 15 days of such month:

(1) Producer milk from producers whose payments are authorized to be collected by a cooperative association;

(2) Bulk fluid milk products by transfer or diversion from a pool plant operated by a cooperative association; and

(3) Milk from a cooperative association in its capacity as a handler pursuant to § 1036.9(c) that also operates a pool plant.

(b) Subject to paragraph (d) of this section, each handler shall pay to the market administrator on or before the 17th day after the end of each month an amount equal to such handler's value of milk for such month determined pursuant to § 1036.60(a) as adjusted by the butterfat differential specified in § 1036.74 and pursuant to § 1036.60(b) through (e), less:

(1) Payments made by the handler pursuant to paragraph (a) of this section for such month;

(2) Payments to be made pursuant to § 1036.73(a) and (c) for producer milk received during such month; and

(3) The value at the weighted average price applicable at the location of the plants from which received with respect to other source milk for which a value is computed pursuant to § 1036.60(e).

(c) Subject to paragraph (d) of this section, each handler operating a pool plant who receives bulk fluid milk products by transfer or diversion from a pool plant operated by a cooperative association, or who receives milk from a cooperative association in its capacity as a handler pursuant § 1036.9(c) that also operates a pool plant, shall pay to the market administrator, on or before the 17th day after the end of each month, an amount determined by multiplying the quantity of such receipts during the month that was classified in each class pursuant to § 1036.42 by the applicable class price, as adjusted by the butterfat differential specified in § 1036.74, less any payment made by the handler pursuant to paragraphs (a) (2) and (3) of this section for such month. For the purpose of such computation, the applicable Class I price shall be the Class I price applicable at the transferee plant.

(d) The following conditions shall apply with respect to the payments prescribed in paragraphs (a), (b) and (c) of this section:

(1) Payments to the market administrator shall be deemed not to have been made until such payments have been received by the market administrator;

(2) If the date by which payments must be received by the market administrator falls on a Saturday or Sunday or any day that is a national holiday, payments shall not be due until the next day on which the market administrator's office is open for public business; and

(3) Payments due the market administrator from a cooperative association handler may be offset by payments determined by the market administrator to be due the cooperative association pursuant to § 1036.73(b).

(e) On or before the 25th day after the end of the month, each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such disposition from such plant in marketing areas regulated by two or more marketwide pool orders, the re-

constituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (e)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

[43 FR 38798, Aug. 31, 1978, as amended at 45 FR 36356, May 30, 1980]

§ 1036.72 Payments from the producer-settlement fund.

Subject to § 1036.73(c), on or before the 18th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the net pool obligation pursuant to § 1036.60 for such handler is less than the value at the uniform price, as adjusted pursuant to § 1036.75 of such handler's receipts or producer milk.

[45 FR 36356, May 30, 1980]

§ 1036.73 Payments to producers and to cooperative associations.

(a) Subject to paragraphs (c) through (f) of this section, each handler shall make payment to each producer (whose payments are not authorized to be collected by a cooperative association) as follows:

(1) On or before the last day of the month, to each producer who has not discontinued delivery of to such handler, not less than the amount determined by multiplying the pounds of producer milk received from such producer during the first 15 days of the month by the Class III price for the preceding month, less proper deductions authorized by the producer; and

(2) On or before the 18th day after the end of the month, to each producer not less than the amount determined by multiplying the pounds of producer milk received from such producer during the month by the uniform price as adjusted pursuant to §§ 1036.74 and 1036.75, less the following amounts;

(i) The payment made pursuant to paragraph (a)(1) of this section for such month;

(ii) Proper deductions authorized by the producer;

(iii) Any marketing service deduction pursuant to § 1036.86;

(iv) Deductions for advertising and promotion made pursuant to § 1036.107; and

(v) If before such date the handler has not received full payment from the market administrator pursuant to § 1036.72 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to this section following the date on which the remaining payment is received from the market administrator.

(b) Subject to paragraphs (e) and (f) of this section, the market administrator shall pay to each cooperative association:

(1) On or before the last day of each month for milk for which payment pursuant to § 1036.71(a) has been received by the market administrator; and

(2) On or before the 18th day after the end of each month for milk for which payment is received by the market administrator pursuant to § 1036.71. Such payment shall be at the applicable uniform price for the month, subject to the following adjustments:

(i) Any applicable adjustments pursuant to §§ 1036.74 and 1036.75; and

(ii) Less the payments made pursuant to paragraph (b)(1) of this section.

(c) Any handler who the market administrator determines is or was delinquent with respect to any payment obligation under this order shall not be eligible to make payments directly to producers for its receipts of producer milk pursuant to paragraph (a) of this section. Any such payments due producers (except any amount due pursuant to § 1036.72) shall be made to the market administrator on or before the day prior to the dates specified in paragraph (a) of this section. The market administrator shall, in turn, pay such producers the amounts so received from the handler plus any amounts due such producers pursuant to § 1036.72. This payment arrangement shall be followed until the handler has met all prescribed payment obligations for three consecutive months.

(d) In making payments to producers pursuant to paragraphs (a) and (c) of this section each producer shall be furnished the following information:

(1) The identity of the handler and the producer and the month to which the payment applies;

(2) The total pounds and, with respect to final payments, the average butterfat content of the milk for which payment is being made;

(3) The minimum rate of payment required by the order and the rate of payment used if such rate is other than the applicable minimum rate;

(4) The amount and nature of any deductions from the amount otherwise due the producer; and

(5) The net amount of payment to the producer.

(e) The following conditions shall apply with respect to the payments prescribed in paragraphs (a) through (d) of this section:

(1) If the date by which such payments are to be made falls on a Saturday or Sunday or on any day that is a national holiday, such payments need not to be made until the next day on which the market administrator's office is open for public business; and

(2) If the application of § 1036.71(d)(2) or paragraph (e)(1) of this section results in a delay in the partial or final payments by handlers to the market administrator or by the market administrator to handlers, the corresponding partial or final payments prescribed in paragraphs (a) through (d) of this section may be delayed by the same number of days.

(f) If the market administrator does not receive the full payment required of a handler pursuant to § 1036.71, he shall reduce uniformly per hundredweight the payments due producers and/or cooperative associations for their milk received by such handler by a total amount not in excess of the amount due from such handler. The market administrator shall complete such payments on or before the next date for making payments pursuant to this section following the date on which the remaining payment is received from such handler. The market administrator shall first complete the payment to producers and/or cooperative associations who have the oldest outstanding payments due them.

[43 FR 38798, Aug. 31, 1978, as amended at 45 FR 36356, May 30, 1980; 49 FR 23035, June 4, 1984]

§ 1036.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent at a rate (rounded to the nearest one-tenth cent) determined by multiplying the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter pound at Chicago, as reported by the Department for the month by 0.115.

§ 1036.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price for producer milk received at a plant shall be adjusted according to the location of such plant at the rates set forth in § 1036.52.

(b) The weighted average price applicable to other source milk shall be subject to the same adjustments applicable to the uniform price, except that the weighted average price shall not be less than the Class III price.

§ 1036.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month either of the amounts (at the handler's election) calculated pursuant to paragraph (a) or (b) of this section. If the handler fails to report pursuant to §§ 1036.30 and 1036.31(b) the information necessary to compute the amount specified in paragraph (a) of this section, he shall pay the amount computed pursuant to paragraph (b) of this section:

(a) An amount computed as follows:

(1) The obligation that would have been computed pursuant to § 1036.60 at such plant shall be determined as though such plant were a pool plant, subject to the following modifications:

(i) Receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant;

(ii) Transfers from such nonpool plants to a pool plant or other order plant shall be classified as Class II or Class III milk if allocated to such class at the pool plant or other order plant and be valued at the weighted average price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class III price. No obligation shall apply to Class I milk transferred to a pool plant or another order plant is such Class I utilization is assigned to receipts at the partially regulated distributing plant from pool plants and other order plants at which such milk was classified and priced as Class I milk. There shall be included in the obligation so computed a charge in the amount specified in § 1036.60(e) and a credit in the amount specified in § 1036.71(a)(2)(ii) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class III price, unless an obligation with respect to such plant is computed as specified below in paragraph (a)(1)(iii) of this section;

(iii) If the operator of the partially regulated distributing plant so requests, and provides with his report pursuant to § 1036.30 a similar report for each nonpool plant which serves as a supply plant for such partially regulated distributing plant by shipments to such plant during the month equivalent to the requirements of § 1036.7 (b) and (c), with agreement of the operator of such plant that the market administrator may examine the books and records of such plant for purposes of verification of such reports, there will be added the amount of the obligation computed at such nonpool supply plant in the same manner and subject to the same conditions as for the partially regulated distributing plant.

(2) From this obligation, deduct the sum of:

(i) The gross payments made by such handler for milk (adjusted to a 3.5-percent butterfat basis pursuant to § 1036.74) received during the month from dairy farmers at such plant and like payments made by the operator of a supply plant(s) included in the computations pursuant to paragraph (a)(1) of this section; and

(ii) Payments to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant.

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat in the plant's route disposition in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received at the plant:

(i) As Class I milk from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the act; and

(ii) From a nonpool plant that is not another order plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such nonpool plant by handlers fully regulated under this or any other order issued pursuant to the act is classified and priced as Class I milk and is not used as an offset on any other payment obligation under this or any other order;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of as route disposition in the marketing area;

(4) Multiply the remaining pounds by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the weighted average price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (b)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

[43 FR 38798, Aug. 31, 1978, as amended at 45 FR 36357, May 30, 1980]

§ 1036.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses adjustments to be made, for any reason, which result in moneys due the market administrator from such handler, due such handler from the market administrator, or due any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any such amount due, and payment thereof shall be made on or before the next date for making payment set forth in the provision under which such error occurred, following the 5th day after such notice. The market administrator shall offset any moneys due a handler against moneys due from such handler.

§ 1036.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1036.71, 1036.73, 1036.76, 1036.77, 1036.85, and 1036.86 shall be increased 1 percent beginning on the first day after the due date of such obligation and on the same day of each succeeding month until such obligation is paid. All such charges on overdue accounts shall be paid to the administrative assessment fund maintained by the market administrator.

[45 FR 36357, May 5, 1980]

Administrative Assessment And Marketing Service Deduction

§ 1036.85 Assessment for order administration.

As his pro rata share of the expense of administration of this part, each handler shall pay to the market administrator on or before the 17th day after the end of the month 3 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk handled during the month as follows:

(a) Each handler with respect to his receipts of producer milk (including such handler's own-farm production and milk received from a cooperative association pursuant to § 1036.9(c)), fluid milk products transferred or diverted in bulk from a pool plant operated by a cooperative association and other source milk allocated to Class I pursuant to § 1036.44(a) (7) and (12) and the corresponding steps of § 1036.44(b), except such other source milk on which no handler obligation applies pursuant to § 1036.60(e); and

(b) Each handler in his capacity as the operator of a partially regulated distributing plant with respect to his route disposition in the marketing area in excess of the skim milk and butterfat subtracted pursuant to § 1036.76(b)(2).

[43 FR 38798, Aug. 31, 1978, as amended at 45 FR 36357, May 30, 1980]

§ 1036.86 Deductions for marketing services.

(a) Except as set forth in paragraphs (b) and (c) of this section, each handler or the market administrator in making payments to producers pursuant to § 1036.73 (a) and (c) shall deduct 5 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to milk of such producer (except a handler's own-farm production) and shall pay such deductions to the market administrator not later than the 17th day after the end of the month. Such money shall be used by the market administrator to verify or establish weights, samples, and tests of producer milk and to provide producers with market information. The services shall be performed by the market administrator or an agent engaged by and responsible to him.

(b) In the case of producers for whom a cooperative association is actually performing the services set forth in paragraph (a) of this section and for whom the cooperative is not authorized to collect payment for milk, each handler shall make in lieu of the deductions specified in paragraph (a) of this section, such deductions as are authorized by such producers, and, on or before the 18th day after the end of each month, pay over such deductions to the association rendering such services.

(c) In the case of producers for whom a cooperative association is not performing the services set forth in paragraph (a) but for whom the cooperative association is collecting payment for milk pursuant to § 1036.72(b) the market administrator shall make the deduction and perform the services specified in paragraph (a) of this section.

[45 FR 36357, May 30, 1980]

ADVERTISING AND PROMOTION PROGRAM

§ 1036.105 Dairy research and promotion order.

"Dairy Research and Promotion Order" means the order (7 CFR Part 1150) established by the Secretary pursuant to Title I, Subtitle B, of the Dairy and Tobacco Adjustment Act of 1983, Pub. L. 98-180, 97 Stat. 1128, as approved November 29, 1983, and any amendments thereto.

[49 FR 23035, June 4, 1984]

§ 1036.106 Qualified program.

"Qualified program" means a State or regional dairy product promotion, research or nutrition education program certified by the Secretary as a qualified program pursuant to Section 1150.153 of the Dairy Research and Promotion Order.

[49 FR 23035, June 4, 1984]

§ 1036.107 Deduction for advertising and promotion programs.

On or before the 18th day after the end of the month, each handler described in § 1036.9 (a), (b), or (c) shall remit to the market administrator as a deduction from payments to producers an amount equal to the rate per hundredweight specified in § 1036.121(e) times the volume of milk pooled by each such producer for such month. When making such deductions from payments to producers, the handler shall credit any payments required under authority of State law applicable to such producers for an advertising and promotion program that is a qualified program. Such credit shall not exceed the amount of each producer's deduction computed pursuant to this section.

[49 FR 23035, June 4, 1984]

§ 1036.110 Agency.

"Agency" means the body made up of the persons selected pursuant to § 1036.113, which is authorized to expend funds, made available pursuant to § 1036.121(b)(1), on approval by the Secretary, for the purposes of establishing or providing for establishment of research and development projects, advertising (excluding brand advertising), sales promotion, educational, and other programs, designed to improve or promote the domestic marketing and consumption of milk and its products. Members of the Agency shall serve without compensation but shall be reimbursed for reasonable expenses incurred in the performance of duties as members of the Agency.

§ 1036.111 Composition of the Agency.

Each cooperative association or combination of cooperative associations as provided for under § 1036.113(b) with 1.5 percent or more of the total participating producers (producers who have not requested refunds for the most recent quarter) is authorized one Agency member plus one additional Agency member for each additional full 5 percent of the participating producers it represents. Cooperative associations with less than 1.5 percent of the total participating producers that have elected not to combine pursuant to § 1036.113(b), and participating producers who are not members of cooperatives are authorized to select from such group, in total, one Agency member for the first full 1.5 percent plus one additional Agency member for each additional full 5 percent that such producers constitute of the total participating producers. For the purpose of the Agency's initial organization, all producers shall be considered participating producers.

§ 1036.112 Term of office.

The term of office of each member of the Agency shall be 1 year or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

§ 1036.113 Selection of Agency members.

The selection of Agency members shall be made pursuant to this section. Each person selected shall qualify by filing with the market administrator a written acceptance promptly after being notified of such selection.

(a) Each cooperative association authorized one or more Agency members shall notify the market administrator of the name and address of each such member who shall serve at the pleasure of the cooperative.

(b) For the purpose of this section, cooperative associations may combine their participating producer members and, if such combined total is 1.5 percent or more of all participating producers, such cooperatives may select an Agency member(s) under the rules of § 1036.111 and paragraph (a) of this section.

(c) Selection of Agency members to represent participating nonmember producers and participating producer members of a cooperative association(s) having less than 1.5 percent of the total participating producers that have not elected to combine pursuant to paragraph (b) of this section shall be supervised by the market administrator in the following manner:

(1) Promptly after the effective date of this section, and annually thereafter, the market administrator shall notify such participating producers of their opportunity to nominate one or more producers as Agency members and shall specify the number of members to be selected.

(2) Following the closing date for nominations, the market administrator shall announce the nominees who are eligible for Agency membership and shall conduct a referendum among producers eligible to vote. Election to membership shall be determined on the basis of the nominee (or nominees) receiving the largest number of eligible votes. If an Agency member thus elected subsequently discontinues producer status or is otherwise unable to complete his term of office, the market administrator shall appoint as his replacement the participating producer who received the next highest number of eligible votes.

§ 1036.114 Agency operating procedure.

A majority of the Agency members shall constitute a quorum and any action of the Agency shall require a majority of concurring votes of those present and voting.

§ 1036.115 Powers of the Agency.

The Agency is empowered to:

(a) Administer the terms and provisions of the advertising and promotion program within the scope of Agency authority pursuant to § 1036.110;

(b) Make rules and regulations to effectuate the terms and provisions of the advertising and promotion program;

(c) Recommend amendments to the Secretary; and

(d) With the approval of the Secretary, enter into contracts and agreements with persons or organizations as deemed necessary to carry out advertising and promotion programs and projects specified in §§ 1036.110 and 1036.117.

§ 1036.116 Duties of the Agency.

The Agency shall perform all duties necessary to carry out the terms and provisions of this program including, but not limited to, the following:

(a) Meet, organize, and select from among its members a chairman and such other officers and committees as may be necessary and adopt and make public such rules as may be necessary for the conduct of its business;

(b) Develop programs and projects pursuant to §§ 1036.110 and 1036.117;

(c) Keep minutes, books, and records and submit books and records for examination by the Secretary and furnish any information and reports requested by the Secretary;

(d) Prepare and submit to the Secretary for approval prior to each quarterly period a budget showing the projected amounts to be collected during the quarter and how such funds are to be disbursed by the Agency;

(e) Employ and fix the compensation of any person deemed necessary to its exercise of powers and performance of duties;

(f) Establish the rate of reimbursement to the members of the Agency for expenses in attending meetings, and pay the expenses of administering the Agency; and

(g) Provide for the bonding of all persons handling Agency funds in an amount and with surety thereon satisfactory to the Secretary.

§ 1036.117 Advertising, research, education, and promotion program.

The Agency shall develop and submit to the Secretary for approval all programs or projects undertaken under the authority of this part. Such programs or projects may provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of milk and milk products on a nonbrand basis;

(b) The utilization of the services of other organizations to carry out Agency programs and projects if the Agency finds that such activities will benefit all producers under this part;

(c) The establishment, support, and conduct of research and development projects and studies that the Agency finds will benefit all producers under this part.

§ 1036.118 Limitation of expenditures by the Agency.

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1036.121(b)(1) shall be utilized for administrative expense of the Agency.

(b) Agency funds shall not, in any manner, be used for political activity or for the purpose of influencing governmental policy or action, except in recommending to the Secretary amendments to the advertising and promotion program provisions of this part.

(c) Agency funds may not be expended to solicit producer participation.

(d) Agency funds may be used only for programs and projects promoting the domestic marketing and consumption of milk and its products.

§ 1036.119 Personal liability.

No member of the Agency shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member in performance of his duties, except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

§ 1036.120 Procedure for requesting refunds.

Any producer may apply for refund subject to the conditions set forth in this section.

(a) Refund shall be accomplished only through application filed with, and in the manner prescribed by, the market administrator and signed by the producer. Only that information necessary to identify the producer and the records relevant to the refund may be required of such producer. As long as the Dairy Research and Promotion Order is in effect, any producer who files a request for refund in accordance with this section may designate a qualified program to receive such refund.

(b) Except as provided in paragraph (c) of this section, the request shall be submitted within the first 15 days of June, September, December, March for milk to be marketed from the first of the immediately following month through the following June 30th.

(c) A dairy farmer who first acquires producer status under this part may, upon application filed with the market administrator pursuant to paragraph (a) of this section by the end of the month immediately following the month in which producer status is acquired, be eligible for refund on all marketings against which an assessment is withheld for the period through the following June 30th and if producer status is first acquired in June such producer shall be eligible for a refund on all marketings during June and the following 12-month period. Eligibility for refund under this paragraph shall not apply to a person who was a producer under a Federal order under which the same refund notification period applied and such person did not appropriately submit a refund application during such period.

(d) A producer who has appropriately filed request for refund of advertising and promotion program assessments on his marketings of milk under another Federal order shall be eligible (on the basis of his request filed under the other order) for refund with respect to his producer milk under this order against which an assessment is withheld until the opportunity exists for such producer to request a refund pursuant to paragraph (b) of this section.

[43 FR 38798, Aug. 31, 1978, as amended at 45 FR 36357, May 30, 1980; 49 FR 23035, June 4, 1984]

§ 1036.121 Duties of the market administrator.

Except as specified in § 1036.116, the market administrator, in addition to other duties specified by this part, shall perform all the duties necessary to administer the terms and provisions of the advertising and promotion program including, but not limited to, the following:

(a) Within 30 days after the effective date of this section, and annually thereafter, conduct a referendum to determine representation on the Agency pursuant to § 1036.113(c);

(b) Each month deposit into an advertising and promotion fund, separately accounted for, an amount equal to the funds received from handlers pursuant to § 1036.107. The amount deposited shall be disbursed as follows:

(1) To the Agency each month, all such funds less any necessary amount held in reserve to cover refunds in paragraphs (b) (3) or (4) of this section, and payments to cover expenses of the market administrator incurred in the administration of the advertising and promotion program (including audit).

(2) (Reserved)

(3) As long as the Dairy Research and Promotion Order is in effect, paragraph (b)(4) of this section shall apply in lieu of this paragraph. After the end of each calendar month make a refund to each producer who has made application for such refund pursuant to § 1036.120. Such refund shall be the amount paid to the market administrator pursuant to § 1036.107 for such producer.

(4) As long as the Dairy Research and Promotion Order is in effect, remit to any qualified programs any refunds designated by producers to be paid to such programs no later than the last day of the month following the month in which the milk was marketed. If a refund request does not designate a qualified program to receive such money, the refund shall be remitted to the National Dairy Promotion and Research which is defined in the Dairy Research and Promotion Order.

(c) Promptly after the effective date of this section, and thereafter with respect to a new producer, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1036.105 through 1036.122).

(d) Make necessary audits to establish that all Agency funds are used only for authorized purposes.

(e) As soon as possible after April of each year, compute the rate of withholding by multiplying the simple average of the uniform prices for the 12-month period ending April 30 by 0.0075 and rounding to the nearest whole cent. This rate shall apply during the 12-month period beginning with July of the current year: *Provided*, That the rate shall be 10 cents per hundredweight as long as the Dairy Research and Promotion Order is in effect.

(f) As soon as possible after the rate of withholding is computed, notify in writing each producer currently on the market and any new producer that subsequently enters the market of the withholding rate. This notification shall be repeated annually thereafter only if there is any change in the rate from the previous period.

[43 FR 38798, Aug. 31, 1978, as amended at 45 FR 36358, May 30, 1980; 49 FR 23035, June 4, 1984]

§ 1036.122 Liquidation.

In the event that the provisions of this advertising and promotion program are terminated, any remaining uncommitted funds applicable thereto shall revert to the producer-settlement fund.

PART 1040—MILK IN SOUTHERN MICHIGAN MARKETING AREA

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ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1040.85 Assessment for order administration.
1040.86 Deduction for marketing services.

AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

SOURCE: 38 FR 4649, Feb. 20, 1973, unless otherwise noted.

GENERAL PROVISIONS

§ 1040.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1040.2 Southern Michigan marketing area.

"Southern Michigan marketing area," hereinafter referred to as the "marketing area," means all territory geographically within the places listed below, together with all piers, docks, and wharves connected therewith, and all craft moored thereat, and all territory wholly or partly herein occupied by Government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments.

MICHIGAN COUNTIES

Alcona, Allegan (Dorr, Leighton, Hopkins, Wayland, Watson, Martin, Otsego, and

Gunplain Townships only), Alpena, Antrim, Arenac, Barry, Bay, Benzie, Calhoun, Charlevoix, Cheboygan, Clare, Clinton, Crawford, Eaton, Emmett, Genesee, Gladwin, Grand Traverse, Gratiot, Huron, Ingham, Ionia, Iosco, Isabella, Jackson, Kalamazoo, Kalkaska, Kent, Lake, Lapeer, Leelanau, Livingston, Macomb, Manistee, Mason, Mecosta, Midland, Missaukee, Monroe (Ash and Berlin Townships only), Montcalm, Montmorency, Muskegon, Newaygo, Oakland, Oceana, Ogemaw, Osceola, Oscoda, Otsego, Ottawa, Presque Isle, Roscommon, Saginaw, St. Clair, Sanilac, Shiawassee, Tuscola, Washtenaw, Wayne, Wexford.

§ 1040.3 Route disposition.

"Route disposition" means a delivery, either directly or through any distribution facility (including a delivery by a vendor or sale from a plant or plant store) of any fluid milk product classified as Class I milk to a wholesale or retail outlet other than a delivery to any milk or filled milk plant.

§ 1040.4 [Reserved]

§ 1040.5 Distributing plant.

"Distributing plant" means a plant in which milk approved by any duly constituted regulatory agency for fluid consumption in the marketing area is processed or packaged and from which there is route disposition of fluid milk products in consumer-type packages or dispenser units in the marketing area.

§ 1040.6 Supply plant.

"Supply plant" means a plant in which milk approved by any duly constituted regulatory agency for fluid consumption in the marketing area is assembled and either processed or shipped in the form of a bulk fluid milk product to another milk processing plant. Such supply plant shall be equipped with stationary holding facilities.

§ 1040.7 Pool plant.

Except as provided in paragraph (c) of this section, "pool plant" means:

(a) A distributing plant:

(1) From which total route disposition, except filled milk, during the month is not less than 50 percent of the combined Grade A milk received in bulk at such plant direct from producers, from supply plants, from a cooperative association as described in § 1040.9(c) or diverted by the plant operator or by a cooperative association pursuant to § 1040.13 as producer milk; or

(2) That qualified as a pool plant in either of the immediately preceding 2 months on the basis of performance standards described in paragraph (a)(1) of this section.

(b) A supply plant which during the month meets one of the performance requirements specified in paragraph (b)(1), (2), or (3) of this section: *Provided,* That all supply plants which are operated by one handler, or all the supply plants for which a handler is responsible for meeting the performance requirements of this paragraph under a marketing agreement certified to the market administrator by both parties, may be considered as a unit for the purpose of meeting the performance requirements of paragraph (b) (1), (2), or (3) of this section upon written notice to the market administrator specifying the plants to be considered as a unit and the period during which such consideration shall apply. Such notice and notice of any change in designation, shall be furnished on or before the fifth working day following the month to which the notice applies. In any months of April through September a unit shall not contain any plant which was not qualified under this paragraph either individually or as a member of a unit during the previous October through March.

(1) A supply plant from which each month not less than 30 percent of the total quantity of Grade A milk received at such plant from producers and from a handler described in § 1040.9(c), or diverted therefrom by the plant operator or a cooperative association (as described in § 1040.9(b)) pursuant to § 1040.13, less any Class I disposition of fluid milk products which are processed and packaged in consumer-type containers in the plant, is transferred to plants described in paragraph (b)(5) of this section, subject to the following conditions:

(i) Not more than one-half of the shipping percentage specified in this paragraph may be met through the diversion of producer milk from the supply plant to pool distributing plants; and

(ii) A supply plant that qualifies as a pool plant pursuant to this subparagraph in each of the months of October through March shall be a pool plant for the following months of April through September.

(2) A plant operated by a cooperative association which supplies distributing plants qualified under paragraph (a) of this section, if transfers from such supply plant to plants described in paragraph (b)(5) of this section and by direct delivery from the farm to plants qualified under paragraph (a) of this section are:

(i) Not less than one-half of its total member producers' milk in the current month; or

(ii) Not less than one-half of its total member producers' milk for the second through the 13th preceding months, if such plant was qualified under this paragraph in each of the preceding 13 months.

(3) A plant located in the marketing area operated by a cooperative association, which plant has been a pool plant for 12 consecutive months but is not otherwise qualified under this paragraph, on meeting the following conditions:

(i) The cooperative has a marketing agreement with another cooperative whose members deliver at least 50 percent of their milk during the month directly to distributing plant(s) qualified under paragraph (a) of this section; and

(ii) The aggregate monthly quantity supplied by both such cooperatives to distributing plants by transfer from the cooperative's plant to plants described in paragraph (b)(5) of this section and by direct delivery from farms to plants qualified under paragraph (a) of this section is not less than 50 percent of the combined total of their member producers' milk deliveries during the month.

(4) On written request by the handler or cooperative for the nonpool status of any plant automatically qualified as a pool plant under this paragraph April through September, made to the market administrator prior to the beginning of any month during such period, the plant shall be a nonpool plant for such month and thereafter until it requalifies under paragraph (b)(1) of this section on the basis of actual shipments therefrom. To requalify as a pool plant under paragraph (b)(2) or (3) of this section or on unit basis, such plant must first have met the shipping requirements of paragraph (b)(1) of this section for 6 consecutive months.

(5) Qualifying transfers from supply plants pursuant to this paragraph may be made to the following plants:

(i) Pool plants described in paragraph (a) of this section; and

(ii) Distributing plants fully regulated under other Federal orders except that credit for transfers to such plants shall be limited to the quantity of milk transferred from the supply plant to pool distributing plants during the month. Qualifying transfers to other order plants shall not include transfers made on the basis of agreed upon Class II or Class III utilization.

(c) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) An exempt plant;

(3) A distributing plant from which the Secretary determines there is a greater proportion of route disposition (except filled milk) in another marketing area regulated by another order issued pursuant to the Act than in the Southern Michigan marketing area and such plant is fully subject to regulation of such other order: *Provided*, That a distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which it has a greater proportion of its route disposition (except filled milk) in such other marketing area, unless, notwithstanding the provisions of this subparagraph, it is regulated by such other order.

(4) A distributing plant which meets the requirements of paragraph (a) of this section which also meets the pooling requirements of another order on the basis of its route disposition in such other marketing area and from which the Secretary determines there is a greater quantity of route disposition (except filled milk) during the month in this marketing area than in such other marketing area but which

plant is nevertheless fully regulated under such other order; and

(5) A supply plant which during the month is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act, unless such plant is qualified as a pool plant pursuant to paragraph (b) of this section and a greater volume of fluid milk products (except filled milk) is moved to pool distributing plants than is moved to plants qualified as fully regulated plants under such other order on the basis of route disposition in the other marketing area.

[38 FR 4649, Feb. 20, 1973, as amended at 39 FR 33786, Sept. 20, 1974; 42 FR 38585, July 29, 1977; 46 FR 27903, May 22, 1981]

§ 1040.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the class pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined under this or any other Federal order issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant, a producer-handler plant nor an exempt plant and from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant and from which a fluid milk product is shipped during the month to a pool plant.

(e) "Exempt plant" means a plant, other than a plant described in paragraph (b) of this section, located outside the marketing area from which there is route disposition within the marketing area, but from which the route disposition wholly or partly within the marketing area averages less than 600 pounds per day for the month, and from which no milk is transferred to other handlers. Only §§ 1040.32 and 1000.5 of this chapter shall apply to an exempt plant.

§ 1040.9 Handler.

"Handler" means:

(a) Any person who operates a pool plant;

(b) Any cooperative association with respect to producer milk diverted in accordance with § 1040.13 for the account of such association;

(c) Any cooperative association with respect to milk it receives for its account from the farm of a producer in a tank truck owned and operated by, or under the control of, such association, for delivery to a pool plant (such milk shall be considered as having been received by such cooperative association at a location identical to that of the pool plant to which it is delivered);

(d) Any person who operates a partially regulated distributing plant;

(e) Any producer-handler; and

(f) Any person in his capacity as the operator of an other order plant from which fluid milk products are distributed on routes in the marketing area or shipped to a pool plant.

[38 FR 4649, Feb. 26, 1973, as amended at 39 FR 33786, Sept. 20, 1974]

§ 1040.10 Producer-handler.

"Producer-handler" means a person who:

(a) Operates a dairy farm and a milk plant from which there is route disposition in the marketing area and who received fluid milk products only from his own production or by transfer from a pool plant and no milk products other than fluid milk products for reconstitution into fluid milk products; and

(b) Provides proof that: (1) The care and management of all dairy animals and other resources necessary to produce the entire volume of fluid milk products handled (excluding receipts by transfer from a pool plant); and (2) the operation of the processing business is the personal enterprise and risk of such person.

§ 1040.11 [Reserved]

§ 1040.12 Producer.

"Producer" means any person, other than a producer-handler under any Federal order, who produces milk approved by any duly constituted regulatory agency for fluid consumption in the marketing area, which is moved to a pool plant or diverted pursuant to § 1040.13 from a pool plant to another plant. The term shall include such a person with respect to milk diverted to a pool plant from an other order plant (unless designated for Class III use) during any month in which the quantity diverted is greater than the quantity of milk physically received from such person at the plant from which diverted and such milk is exempt from the pooling provisions of the other order.

§ 1040.13 Producer milk.

"Producer milk" shall be the skim milk and butterfat in milk from producers that is:

(a) Received at a pool plant directly from a producer excluding such milk that is diverted from another pool plant;

(b) Received by a handler described in § 1040.9(c);

(c) Diverted by the operator of a pool plant to another pool plant; and

(d) Diverted by the operator of a pool plant or by a handler described in § 1040.9(b) to a nonpool plant, other than a producer-handler, subject to the following conditions:

(1) In any month that less than 2 days' production of a producer is delivered to a pool plant, the quantity of milk of the producer diverted during the month shall not be producer milk;

(2) The total quantity of producer milk diverted by a cooperative association or by the operator of a pool plant may not exceed 60 percent during each of the months of October through March of the total quantity of producer milk for which it is the handler;

(3) Any milk diverted in excess of the limits described in paragraph (d)(2) of this section shall not be producer milk. The diverting handler may designate the dairy farmers whose diverted milk will not be producer milk, otherwise the total milk diverted on the last day of the month, then the second-to-the-last day, and so on in daily allotments will be excluded until all of the over-diverted milk is accounted for; and

(4) Milk which is subject to pooling under another order, shall not be producer milk.

[46 FR 27904, May 22, 1981]

§ 1040.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk fluid cream products from any source other than producers, handlers described in § 1040.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1040.40(b)(1);

(c) Products (other than fluid milk products and products specified in § 1040.40(b)(1)), from any source (including those products produced at the plant) which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1040.40(b)(1) for which the handler fails to establish disposition.

§ 1040.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form: Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed

glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

[38 FR 4649, Feb. 20, 1973, as amended at 40 FR 31943, July 30, 1975]

§ 1040.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of a cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1040.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

§ 1040.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers, which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act";

(b) To have full authority in the sale of milk of its members and is engaged in making collective sales or marketing milk or its products for its members; and

(c) To have all of its activities under the control of its members.

§ 1040.19 [Reserved]

§ 1040.20 Reload point.

"Reload point" means a location at which milk moved from a farm in a tank truck is transferred directly to another tank truck and commingled with other milk before entering a plant. A reload operation on the premises of a plant shall be considered a part of the plant operation.

§ 1040.21 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1040.51a:

(a) *Butter price.* "Butter price" means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) *Cheddar cheese price.* "Cheddar cheese price" means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following workday until the next price is reported. A work-day is each Monday through Friday except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) *Nonfat dry milk price.* "Nonfat dry milk price" means the simple average, for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Division as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding workday until the day such prices were previously reported. A work-day is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price.* "Edible whey price" means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

[47 FR 42970, Sept. 30, 1982]

HANDLER REPORTS

§ 1040.30 Reports of receipts and utilization.

On or before the fifth working day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1040.9(c);

(3) Receipts of fluid milk products and fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1040.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1040.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1040.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1040.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1040.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1040.32 Other reports.

(a) [Reserved]

(b) In addition to the reports required pursuant to §§ 1040.30 and 1040.31, each handler and each operator of an exempt plant shall report such other information as the market administrator deems necessary to verify or establish such person's obligation under the order.

(c) When a holiday prevents normal business activities on any day except Sunday during the first 15 days of the month, those of the dates specified in §§ 1040.30, 1040.62, 1040.71, 1040.72, 1040.73, 1040.76, 1040.85, and 1040.86 which follows such holiday shall be postponed by the number of days lost as a result of such holiday.

[38 FR 4649, Feb. 20, 1973, as amended at 50 FR 24612, June 12, 1985]

CLASSIFICATION OF MILK

§ 1040.40 Classes of utilization.

Except as provided in § 1040.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1040.30 shall be classified as follows:

(a) *Class I milk.* Except as provided in paragraph (c) of this section, Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Except as provided in paragraph (c) of this section, Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, or any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt. Any product specified in this subparagraph that is modified by the addition of nonfat milk solids shall be Class II milk in an amount equal only to the weight of an equal volume of an unmodified product of the same nature and butterfat content;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section; and

(3) Used to produce cottage cheese, lowfat cottage cheese, and dry curd cottage cheese.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter, plastic cream, frozen cream, and anhydrous milkfat;

(iii) Any milk product in dry form;

(iv) Milk shake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts (including frozen yogurt), and frozen dessert mixes (including frozen yogurt mixes);

(v) Custards, puddings, and pancake mixes;

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers;

(vii) Evaporated or condensed milk (plain or sweetened) in a consumer-type package evaporated or condensed skim milk (plain or sweetened) in a consumer-type package, and any concentrated milk product in bulk, fluid form;

(viii) Any product containing 6 percent or more nonmilk fat (or oil) except those products specified in paragraph (b)(1) of this section; and

(ix) Any product that is not a fluid milk product and that is not specified in paragraphs (c)(1) (i) through (viii) of this section or in paragraph (b) of this section;

(2) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or

filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages;

(3) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(4) In fluid milk products and products specified in paragraph (b) of this section that are disposed of by a handler for animal feed;

(5) In fluid milk products and products specified in paragraph (b) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(6) In skim milk in any modified fluid milk product or modified product specified in paragraph (b)(1) of this section that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition or classified as Class II milk, as the case may be; and

(7) In shrinkage assigned pursuant to § 1040.41(a) to the receipts specified in § 1040.41(a)(2) and in shrinkage specified in § 1040.41 (b) and (c).

[38 FR 4649, Feb. 20, 1973, as amended at 42 FR 38585, July 29, 1977]

§ 1040.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1040.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraphs (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraphs (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (b)(1) of such section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1040.9(c) and in milk diverted to such plant from another pool plant except that in either case if the operator of the plant to which the milk is delivered purchases the milk on the basis of weights determined by farm bulk tank calibration and butterfat tests bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined by farm bulk tank calibration and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from other order plants, excluding milk received by diversion and the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk milk transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraphs (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1040.9 (b) or (c) but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined by farm bulk tank calibration and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1040.42 Classification of transfers and diversions.

(a) *Transfers and diversions to pool plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant except as provided in § 1040.43(d) shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case the classification of such transfers or diversions shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant or divertee-plant after the computations pursuant to § 1040.44(a)(12) and the corresponding step of § 1040.44(b);

(2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to § 1040.44(a)(7) or the corresponding step of § 1040.44(b), the skim milk or butterfat so transferred or diverted shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler or divertor-handler received during the month other source milk to be allocated pursuant to § 1040.44(a)(11) or § 1040.44(a)(12) or the corresponding steps of § 1040.44(b), the skim milk or butterfat so transferred or diverted up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant or divertee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers, or diversions in bulk form shall be classified as Class II or Class III to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For the purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1040.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraphs (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraphs (d)(2)(ii) through (viii) of this section:

(*a*) The transferor-handler or diverter-handler claims such classification in his report of receipts and utilization filed pursuant to § 1040.30 for he month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(b) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this paragraph, any fluid milk products and bulk fluid cream products transferred form such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this paragraph.

§ 1040.43 General classification rules.

In determining the classification of producer milk pursuant to § 1040.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1040.30 and shall compute the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1040.40, 1040.41, and 1040.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids;

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1040.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association; and

(d) Milk in bulk delivered by a cooperative association as a handler under § 1040.9(c) or from the pool plant of a cooperative association to a handler's pool plant shall be classified according to use or disposition by the latter handler and the value thereof at the class prices shall be included in his value of milk pursuant to § 1040.60.

§ 1040.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1040.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1040.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Except for the first month that a pool plant is subject to this paragraph, subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1040.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to (excluding the quantity of such skim milk that was classified as Class III milk pursuant to § 1040.40(c)(6)), any product specified in § 1040.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and packaged inventory at the beginning of the month of products specified in § 1040.40(b)(1) that was not subtracted pursuant to paragraphs (a) (4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a) (2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined by subtracting from 125 percent of the pounds of skim milk remaining in Class I at this allocation step the sum of the pounds of skim milk in receipts of producer milk, milk from a handler described in § 1040.9(c), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1040.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraphs (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subtract from the pounds of skim milk remaining in each class pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2), (7)(v) and (8)(i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraphs (a)(7)(vi) and (8)(iii) of this section:

(i) Subject to the provisions of paragraph (a)(12)(ii) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1040.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step; and

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1040.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk and milk received pursuant to § 1040.43(d), subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to § 1040.44(a)(14) and the corresponding step of § 1040.44(b).

§ 1040.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1040.44(a)(12) and the corresponding step of § 1040.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1040.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

CLASS PRICES

§ 1040.50 Class prices.

Subject to the provisions of § 1040.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.60: *Provided,* That from the effective date hereof through March 1975 the Class I price shall be the basic formula price for the preceding month plus $1.60.

(b) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price computed pursuant to § 1040.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, except that in no event shall the final Class II price be less than the Class III price: *Provided,* That for the first month this paragraph is effective the Class II price shall be the Class III price for the month plus 15 cents.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to §1040.51 and add 15 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1040.51a.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

[38 FR 4649, Feb. 20, 1973, as amended at 39 FR 30926, Aug. 27, 1974; 40 FR 6316, Feb. 11, 1975; 47 FR 42970, Sept. 30, 1982]

§ 1040.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1040.51a Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1040.51 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed using price data determined pursuant to § 1040.21 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the

Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following subparagraphs is of the total of the data represented in paragraphs (c) (1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Statistical Reporting Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Statistical Reporting Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

[47 FR 42970, Sept. 30, 1982]

§ 1040.52 Plant location adjustments for handlers.

(a) For producer milk received at a pool plant and classified as Class I milk without movement in bulk to another pool plant and for which a location adjustment is applicable, the Class I price computed pursuant to § 1040.50(a) shall be reduced pursuant to paragraph (a)(1) or (2) of this section on the basis of the applicable rate per hundredweight for the location of such plant.

(1) *Zone rates.* For a plant located within the following described territory, including the cities located therein, the applicable zone rates shall be as follows:

MICHIGAN COUNTIES

ZONE I—NO ADJUSTMENTS

Genesee, Lenawee, Macomb, Monroe, Oakland, Wayne.

Bay (except Gibson, Mount Forest, Pinconning, Garfield, and Fraser Townships).

Saginaw (except Jonesfield, Richland, Lakefield, Fremont, Marion, Brant, Chapin, Brady, Chesaning, and Maple Grove Townships).

St. Clair (except Berlin, Riley, Mussey, Emmett, Lynn, Brockway, Greenwood, Grant, and Burtchville Townships).

Washtenaw (except Manchester, Bridgewater, Sharon, Freedom, Sylvan, Lima, Lyndon, and Dexter Townships).

ZONE II—5 CENTS

Ingham, Jackson, Livingston.

Washtenaw (all the townships excluded from Zone I).

ZONE III—7 CENTS

Arenac, Clinton, Eaton, Gladwin, Gratiot, Huron, Isabella, Lapeer, Midland, Sanilac, Shiawassee, Tuscola.

Bay (all the townships excluded from Zone I).

Ionia (except Otisco, Orleans, Keene, Easton, Boston, Berlin, Campbell, and Odessa Townships).

Montcalm (except Reynolds, Winfield, Cato, Belvidere, Pierson, Maple Valley, Pine, Douglass, Montcalm, Sidney, Eureka, and Fairplain Townships).

Saginaw (all the townships excluded from Zone I).

St. Clair (all the townships excluded from Zone I).

ZONE IV—9 CENTS

Barry, Branch, Calhoun, Hillsdale, Kalamazoo, Kent, Mecosta, St. Joseph.

Allegan (all the townships excluded from Zone V).

Ionia (all the townships excluded from Zone III).

Montcalm (all the townships excluded from Zone III).

ZONE V—11 CENTS

Berrien, Cass, Clare, Iosco, Lake, Mason, Missaukee, Muskegon, Newaygo, Oceana, Ogemaw, Osceola, Ottawa, Roscommon, Van Buren.

Allegan (except the townships of Dorr, Gunplain, Hopkins, Leighton, Martin, Otsego, Watson, and Wayland).

ZONE VI—14 CENTS

Alcona, Crawford, Grand Traverse, Kalkaska, Manistee, Oscoda, Wexford.

ZONE VII—17 CENTS

Alpena, Antrim, Benzie, Charlevoix, Cheboygan, Emmet, Leelanau, Montmorency, Otsego, Presque Isle.

(2) *Mileage rate.* For any plant at a location outside the territory specified in the preceding paragraph (a)(1) of this section, the applicable adjustment rate per hundredweight shall be based on the shortest highway distance between the plant and the nearest point in such territory as determined by the market administrator, and shall be the amount of the zone differential applicable at such point plus 1 cent for each 10 miles or fraction thereof from such point.

(b) For fluid milk products transferred in bulk from a pool plant to a pool plant described in § 1040.7(a), the operator of the transferee-plant shall receive credit at the applicable zone or mileage rate, based on the location of the transferor-plant. The total volume on which such credit is computed shall be limited to the amount by which 108 percent of Class I disposition at the transferee-plant is in excess of the sum of receipts at such plant:

(1) From producers, (2) from cooperative associations pursuant to § 1040.9(c), and (3) from other order plants and unregulated supply plants which are assigned in Class I, such assignment of receipts from the transferor-plant to be pro rata to receipts of fluid milk products from all transferor pool plants.

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

[38 FR 4649, Feb. 20, 1973, as amended at 42 FR 41604, Aug. 18, 1977]

§ 1040.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month and the final Class II price for the preceding month, except that the Class II price announced for the first month during which this section is effective shall be the price specified in the proviso in § 1040.50(b): And on or before the 15th day of each month the tentative Class II price for the following month.

[47 FR 42971, Sept. 30, 1982]

§ 1040.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICES

§ 1040.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1040.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk and milk received pursuant to § 1040.43(d) in each class as determined pursuant to § 1040.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1040.44(a)(14) and the corresponding step of § 1040.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1040.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1040.44(a)(9) and the corresponding step of § 1040.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1040.44(a)(7) (i) through (iv) and the corresponding step of § 1040.44(b), excluding receipts of bulk fluid cream products from another order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1040.44(a)(7) (v) and (vi) and the corresponding step of § 1040.44(b);

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1040.44(a)(11) and the corresponding step of § 1040.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(g) For the 1st month that this paragraph is effective with respect to handlers regulated under this part during the preceding month, subtract the amount obtained from multiplying the difference between the Class I price for the preceding month applicable at the location of the pool plant and the Class III price for the preceding month by the hundredweight of skim milk and butterfat in any fluid milk product or product specified in § 1040.40(b) that was in the plant's inventory at the end of the preceding month and classified as Class I milk. For the first month that this paragraph is effective with respect to handlers regulated under Part 1043 of this chapter during the preceding month, subtract the amount obtained from multiplying the difference between the Class II price and the Class III price for the preceding month by the hundredweight of skim milk and butterfat in any fluid milk product or product specified in § 1040.40(b) that was in the plant's inventory at the end of the preceding month and classified as Class II milk.

(h) With respect to milk marketed on or after the effective date hereof through August 1983, deduct the amount obtained by multiplying the pounds of bulk fluid milk and the pounds of condensed milk (whole or skim) which were classified as Class III and were transferred to another order plant pursuant to § 1040.42(b)(3) or to a nonpool plant pursuant to § 1040.42(d)(2), both of which are located outside the State of Michigan, by a per hundredweight rate equal to 3.6 cents for each 10 miles or fraction thereof that such other order plant or nonpool plant is located more than 150 miles, as determined by the market administrator, from the pool plant from which the milk was transferred. No credit should apply to the total quantity of milk so transferred by a handler if any portion of the milk is assigned to Class I.

[38 FR 4649, Feb. 20, 1973, as amended at 48 FR 22288, May 18, 1983]

§ 1040.61 Computation of uniform prices for base milk and excess milk (including uniform price and adjusted uniform price).

For each month the market administrator shall compute:

(a) The 3.5-percent value of all milk by:

(1) Combining into one total the values computed pursuant to § 1040.60 for all handlers who filed the reports prescribed by § 1040.30 for the month and who made the payments pursuant to § 1040.71 for the preceding month;

(2) Adding the aggregate of the values of the applicable location adjustments pursuant to § 1040.75(a)(1); and

(3) Adding not less than one-half of the unobligated balance in the producer-settlement fund.

(b) A uniform price as follows:

(1) Divide the aggregate value computed pursuant to paragraph (a) of this section by the sum of the following:

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1040.60(f); and

(2) Subtract not less than six nor more than 7 cents from the price computed pursuant to paragraph (a) of this section.

[38 FR 4649, Feb. 20, 1973, as amended at 39 FR 30926, Aug. 27, 1974; 50 FR 24612, June 12, 1985]

§ 1040.62 Announcement of uniform prices and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The 5th day after the end of each month the butterfat differential for such month; and

(b) The 11th day after the end of each month the uniform price.

[38 FR 4649, Feb. 20, 1973, as amended at 50 FR 24612, June 12, 1985]

PAYMENTS FOR MILK

§ 1040.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund," into which he shall deposit all payments made by handlers pursuant to §§ 1040.71, 1040.76, and 1040.77 and out of which he shall make all payments due handlers pursuant to §§ 1040.72 and 1040.77.

§ 1040.71 Payments to the producer-settlement fund.

(a) On or before the 13th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) (i) The total value of milk of the handler for such month as determined pursuant to § 1040.60; or

(ii) In the case of a cooperative association which is a handler, the value, at the uniform price, of milk delivered to other handlers pursuant to § 1040.43(d).

(2) The sum of:

(i) The value of such handler's receipts of producer milk as specified in § 1040.73 excluding any applicable location adjustment pursuant to § 1040.75(a) (2) and (3); and

(ii) The value at the uniform price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1040.60(f).

(b) On or before the 25th day after the end of the month each handler who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

[38 FR 4649, Feb. 20, 1973, as amended at 50 FR 24612, June 12, 1985]

§ 1040.72 Payments from the producer-settlement fund.

On or before the 14th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1040.71(a)(2) exceeds the amount computed pursuant to § 1040.71(a)(1). The market administrator shall offset any payment due any handler against payments due from such handler. If the balance in the producer-settlement fund is insufficient to make all payments to all handlers pursuant to this paragraph, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds become available.

§ 1040.73 Payments to producers and to cooperative associations.

(a) Except as provided by paragraph (b) of this section, on or before the 15th day of each month, each handler (except a cooperative association) shall pay each producer for milk received from him during the preceding month, not less than an amount of money computed by multiplying the total pounds of such milk by the applicable uniform prices computed pursuant to § 1040.61 adjusted by the location and butterfat differentials pursuant to §§ 1040.75 and 1040.74, respectively, less the payment made pursuant to paragraph (d) of this section and any proper deductions authorized by the producer. If by such date such handler has not received full payment for such month pursuant to § 1040.72 he may reduce such payments uniformly per hundredweight for all producers, by an amount not in excess of the per hundredweight reduction in payment from the market administrator; however, the handler shall make such balance of payment to those producers to whom it is due on or before the date for making payments pursuant to this paragraph next following that on which such balance of payment is received from the market administrator.

(b) Upon receipt of a written request from a cooperative association which the Secretary determines is authorized by producers to collect payment for their milk and receipt of a written promise to reimburse the handler the amount of any actual loss incurred by him because of any improper claim on the part of the association, each handler shall pay to the cooperative association on or before the second day prior to the end of the month an amount equal to the payments authorized pursuant to paragraph (d) of this section, and on or before the 13th day of each month, in lieu of payments pursuant to paragraph (a) of this section, an amount equal to the gross sum due for all such milk received from certified producers, less amounts owed by each such producer to the handler for supplies purchased from him on prior written order or as evidenced by a delivery ticket signed by the producer.

(1) Each handler shall submit to the cooperative association written information on or before the sixth working day of each month which shows for each such producer:

(i) The total pounds of milk received from him during the preceding month;

(ii) The total pounds of butterfat contained in such milk;

(iii) The number of days on which milk was received; and

(iv) The amounts withheld by the handler in payment for supplies sold;

(2) A copy of each such request, promise to reimburse and certified list of producers shall be filed simultaneously with the market administrator by the association and shall be subject to verification at his discretion, through audit of the records of the cooperative association pertaining thereto. Exceptions, if any, to the accuracy of such certification by a producer, or by a handler shall be made by written notice to the market administrator, and shall be subject to his determination; and

(3) The foregoing payment and the submissions of information pursuant to paragraph (b)(1) of this section shall be made with respect to milk of each producer whom the cooperative association certifies is a member or has authorized such cooperative association to collect for his milk, which is received on and after the first day of the month next following receipt of such certification through the last day of the month next preceding receipt of notice from the cooperative association of a termination of certification or until the original request is rescinded in writing by the association.

(c) On or before the 13th day after the end of each month, each handler shall pay a cooperative association, which is a handler with respect to milk received by him from a pool plant operated by such cooperative association, or by bulk tank delivery pursuant to § 1040.9(c), not less than an amount computed by multiplying the uniform price subject to the location adjustment, if any, applicable at the transferee-plant as provided by § 1040.75 and the butterfat differential provided by § 1040.74 by the total hundredweight of milk received by such handler from the cooperative association.

(d) On or before the last day of each month for producer milk received during the first 15 days of the month at not less than the Class III milk price for the preceding month, less any proper deductions authorized in writing by the producer.

[38 FR 4649, Feb. 20, 1973, as amended at 39 FR 33786, Sept. 20, 1974; 46 FR 27904, May 22, 1981; 50 FR 24612, June 12, 1985]

§ 1040.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform prices shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.113 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

[38 FR 4649, Feb. 20, 1973, as amended at 50 FR 24612, June 12, 1985]

§ 1040.75 Plant location adjustments for producers and on nonpool milk.

(a) Subject to the conditions of paragraph (b) of this section, in making payments to producers or cooperative associations pursuant to § 1040.73 each handler:

(1) May deduct for milk to be paid for at the uniform price the rate per hundredweight applicable pursuant to § 1040.52(a) (1) or (2) for the location of the plant at which the milk was first physically received.

(2) Shall add not less than 4 cents per hundredweight with respect to milk received from producers and cooperative associations pursuant to § 1040.9(c) at a pool plant located in those townships, including the cities located therein, of Oakland County other than Royal Oak and Southfield, all in the State of Michigan.

(3) Shall add not less than 10 cents per hundredweight with respect to milk received from producers and cooperative associations pursuant to § 1040.9(c) at a pool plant located within Wayne County and the townships of Royal Oak and Southfield including the cities located therein, in Oakland County, all in the State of Michigan.

(b) When milk of an individual producer is physically received at more than one location (including any nonpool plant) during the month, the location adjustment rate shall be the weighted average (rounded to the nearest one-half cent) of the amounts computed for the respective locations.

except that if 35 percent or more of such producer's milk is delivered to a plant or plants at which the same rate is applicable, such rate shall be applicable to all deliveries of such producer during the month regardless of point of delivery.

(c) For purposes of computation pursuant to §§ 1040.71 and 1040.72, the uniform price shall be adjusted at the rates set forth in § 1040.52 applicable at the location of the nonpool plant from which the other source milk was received except that the uniform price by such adjustment shall not be less than the Class III price.

[38 FR 4649, Feb. 20, 1973, as amended at 42 FR 38585, July 29, 1977; 50 FR 24612, June 12, 1985]

§ 1040.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1040.30(b) and 1040.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price, both prices to be applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this secton by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1040.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1040.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1040.60 for such handler shall include, in lieu of the value of other source milk specified in § 1040.60(f) less the value of such other source milk specified in § 1040.71(a)(2)(ii), a value of milk determined pursuant to § 1040.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1040.7(b)(1), subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1040.30(b) and 1040.31(b) similar reports for each such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(*c*) The value of milk determined pursuant to § 1040.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments (adjusted to 3.5 percent butterfat value using the butterfat differential pursuant to § 1040.74) by the operator of such partially regulated distributing plant for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments (adjusted to 3.5 percent butterfat value using the butterfat differential pursuant to § 1040.74) by the operator of such nonpool supply plant for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

§ 1040.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses adjustments to be made, for any reason, which result in moneys due:

(a) To the market administrator from such handler;

(b) To such handler from the market administrator; or

(c) To any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any such amount due, and payment thereof shall be made on or before the next date for making payment set forth in the provisions under which such error occurred, following the fifth day after such notice.

§ 1040.78 Charges on overdue accounts.

Any unpaid obligation of a handler or of the market administrator pursuant to §§ 1040.71, 1040.77, 1040.85, and 1040.86, shall be increased one-half of 1 percent on the first day of the month next following the due date of such obligation and on the first day of each month thereafter until such obligation is paid.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1040.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler (excluding a handler described in § 1040.9(c) with respect to milk delivered to pool plants) shall pay to the market administrator on or before the 13th day after the end of the month 2 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including milk of such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1040.44(a) (7) and (11) and the corresponding steps of § 1040.44(b), except such other source milk that is excluded from the computation pursuant to § 1040.60(d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1040.76(a)(2).

§ 1040.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments pursuant to § 1040.73(a) for milk received from each producer (including milk of such handler's own production) at a plant not operated by a cooperative association of which such producer is a member shall deduct 5 cents per hundredweight, or such amount not exceeding 5 cents per hundredweight as the Secretary may prescribe, and, on or before the 13th day after the end of each month, shall pay such deductions to the market administrator. Such moneys shall be used by the market administrator to verify weights, samples, and tests of milk received from producers and to provide producers with market information, such services to be performed by the market administrator or by an agent engaged by and responsible to him;

(b) In the case of producers whose milk is received at a plant not operated by a cooperative association of which such producers are members, for which payment is not made pursuant to § 1040.73 (b) or (c), and for whom a cooperative association is actually performing the services described in paragraph (a) of this section, as determined by the Secretary, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions from payments required pursuant to § 1040.73 as may be authorized by such producers, and pay such deductions on or before the 13th day after the end of the month to the cooperative association rendering such services of which such producers are members.

PART 1044—MILK IN MICHIGAN UPPER PENINSULA MARKETING AREA

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AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

GENERAL PROVISIONS AND DEFINITIONS

§ 1044.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

[36 FR 9850, May 29, 1971]

§ 1044.5 Michigan Upper Peninsula marketing area.

(a) "Michigan Upper Peninsula marketing area" (hereinafter referred to as the "marketing area") means all the territory including all municipal corporations within the zones described below in this section:

(b) "Zone I(a)": The city of Menominee and the townships of Menominee, Mellen and Ingallston in Menominee County, Michigan; the town of Peshtigo and the cities of Marinette and Peshtigo in Marinette County, Wisconsin;

(c) "Zone I": Counties of Delta, Dickinson, Gogebic, Iron, Ontonagon and all territory in Menominee County not included in Zone I(a), all in the State of Michigan; the town of Niagara and the village of Niagara in Marinette County; the towns of Aurora and Florence in Florence County and the towns of Carey, Kimball, Oma, Pence, Saxon and the cities of Hurley and Montreal in Iron County all in the State of Wisconsin;

(d) "Zone 2": Counties of Alger, Baraga, Chippewa, Houghton, Keweenaw, Luce, Mackinac, Marquette and Schoolcraft all in the State of Michigan.

[28 FR 4750, May 11, 1963]

§ 1044.6 Fluid milk product.

"Fluid milk product" means milk, skim milk, flavored milk, flavored milk drinks, buttermilk, filled milk, half and half and cream (sweet or sour).

[34 FR 18649, Nov. 22, 1969]

§ 1044.7 Route.

"Route" means a delivery (including delivery by a vendor or sale from a plant or plant store) of any fluid milk product, other than a delivery to any milk or filled milk processing plant.

[34 FR 18649, Nov. 22, 1969]

§ 1044.8 Fluid milk plant.

"Fluid milk plant" means the premises, buildings and facilities of any milk receiving, processing or packaging plant handling milk eligible for distribution in the marketing area as Grade A milk or conforming to the requirements of Michigan Act No. 169, Public Acts 1929, as amended:

(a) From which any fluid milk product, except filled milk, is disposed of during the month in the marketing area on routes except as provided in § 1044.81; or

(b) From which any milk or skim milk, except skim milk in filled milk, is delivered to plants described in paragraph (a) of this section on ten or more days in any of the months of July through December or on three or more days in any of the months of January through June.

[34 FR 18649, Nov. 22, 1969]

§ 1044.9 Nonfluid milk plant.

"Nonfluid milk plant" means any milk or filled milk receiving, manufacturing or processing plant other than a fluid milk plant. The following categories of nonfluid milk plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonfluid milk plant that is neither an other order plant nor a producer-handler plant and from which fluid milk products in consumer-type packages or dispenser units are distributed on routes in the marketing area during the month.

(d) "Unregulated supply plant" means a nonfluid milk plant that is neither an other order plant nor a producer-handler plant and from which a fluid milk product is shipped during the month to a fluid milk plant.

[34 FR 18649, Nov. 22, 1969]

§ 1044.10 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more fluid milk plants;

(b) Any person in his capacity as the operator of a partially regulated distributing plant;

(c) Any cooperative association with respect to milk from producers which it causes to be diverted from a fluid milk plant to another plant for the account of such cooperative association;

(d) Any cooperative association, at its election, with respect to member milk delivered from the farm to the fluid milk plant of another handler in a tank truck operated by or under contract to the cooperative association. To elect this handler status, the market administrator must be notified prior to the first day of the month during which these deliveries will take place. Milk delivered pursuant to this paragraph is deemed to have been received at the location of the milk plant to which it is delivered;

(e) Any person in his capacity as the operator of an other order plant that would otherwise qualify as a fluid milk plant; or

(f) A producer-handler.

[28 FR 4750, May 11, 1963, as amended at 29 FR 10867, July 30, 1964]

§ 1044.11 Producer.

"Producer" means a person, other than a producer-handler as defined in any order (including this part) who produces milk in conformity with the sanitation requirements for Grade A milk of any duly constituted health authority, or in conformity with the requirements of Michigan Act No. 169, Public Acts 1929, as amended which milk is:

(a) Received at a fluid milk plant; or

(b) Diverted from such plant for the account of a handler.

[29 FR 10867, July 30, 1964]

§ 1044.12 Associated producer.

"Associated producer" means any person, other than a producer-handler, with respect to any of his milk not accepted or accounted for by a handler at a fluid milk plant in any month of December through June, who:

(a) Produces milk in conformity with the sanitation requirements for Grade A milk of any duly constituted health authority or in conformity with the requirements of Michigan Act No. 169, Public Acts 1929, as amended;

(b) Delivered milk to a fluid milk plant in any three of the preceding months of July through November; and

(c) Certifies in writing to the market administrator, on or before the first day after each month of December through June in which his milk is not accepted or accounted for by a handler at a fluid milk plant, that he will deliver his milk to such fluid milk plant and does so deliver upon request from the handler to the market administrator.

[28 FR 4750, May 11, 1963]

§ 1044.13 Producer-handler.

"Producer-handler" means a dairy farmer who distributes fluid milk products on a route in the marketing area but receives no fluid milk products during the month except his own production or from fluid milk plants.

[28 FR 4751, May 11, 1963]

§ 1044.11 Producer milk.

"Producer milk" means skim milk and butterfat contained in Grade A milk received at a fluid milk plant directly from a dairy farmer or a handler pursuant to § 1044.10(d): *Provided*, That:

(a) Milk diverted pursuant to § 1044.11(b) to a nonfluid milk plant that is not subject to the classification and pricing provisions of another order issued pursuant to the Act shall be deemed to have been received by the diverting handler at the location of the plant from which diverted, and

(b) Milk diverted pursuant to § 1044.11(b) to a fluid milk plant shall be deemed to have been received by the diverting handler at the location of the plant to which diverted.

[28 FR 4750 May 11, 1963, as amended at 28 FR 11053, Oct. 16, 1963]

§ 1044.15 Associated producer milk.

"Associated producer milk" means the milk produced by an associated producer that is not accepted or accounted for by a handler at a fluid milk plant and is used for manufacturing purposes in a nonfluid milk plant engaged exclusively in manufacturing operations.

[28 FR 4751, May 11, 1963]

§ 1044.16 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts during the month of fluid milk products except: (1) Receipts from other fluid milk plants or (2) producer milk; and

(b) Products, other than fluid milk products, from any source (including those produced at the fluid milk plant) which are reprocessed or converted to another product in the fluid milk plant during the month.

[28 FR 4751, May 11, 1963]

§ 1044.17 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers, as defined in § 1044.11, which the Secretary determines after application by the association is qualified under provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act".

[28 FR 4751, May 11, 1963]

§ 1044.18 Butter price.

"Butter price" means the simple average as computed by the market administrator of the daily wholesale selling prices (using the midpoint of any price range as one price) per pound of Grade A (92-score) bulk creamery butter at Chicago as reported during the month by the Department.

[28 FR 4751, May 11, 1963]

§ 1044.19 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milk fat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

[34 FR 18649, Nov. 22, 1969]

MARKET ADMINISTRATOR

§ 1044.22 Additional duties of the market administrator.

In addition to the duties specified in § 1000.3(c) of this chapter, the market administrator shall perform the following duties:

(a)–(h) [Reserved]

(i) Publicly announce on or before:

(1) The fifth day of each month:

(i) The Class I price for the following month: *Provided*, That on the effective date hereof the market administrator shall publicly announce the Class I price for the remainder of the month of February 1975 and on or before the fifth day of March 1975 the market administrator shall publicly announce the Class I price for that month;

(ii) The Class I butterfat differential for the current month; and

(iii) The Class II price and Class II butterfat differential, both for the preceding month; and

(2) The 12th day of each month, the uniform price and the producer but-

terfat differential, both for the preceding month;

(j) On or before the 8th day after each month of December through June, notify each handler of each person who has qualified as an associated producer at each of his fluid milk plants;

(k) On or before the 12th day after each month of December through June, notify each handler of the quantity and butterfat test of associated producer milk assigned to each of his fluid milk plants and the amount to be remitted to the market administrator pursuant to § 1044.70(d).

(l) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products from an other order plant, the classification to which such receipts are allocated pursuant to § 1044.46 pursuant to such report, and thereafter any change in such allocation required to correct errors disclosed in verification of such report; and

(m) Furnish to each handler operating a fluid milk plant who has shipped fluid milk products to an other order plant, the classification to which the skim milk and butterfat in such fluid milk products were allocated by the market administrator of the other order on the basis of the report of the receiving handler; and, as necessary, any changes in such classification arising in the verification of such report.

[27 FR 4050, Apr. 28, 1962, as amended at 28 FR 4751, May 11, 1963; 29 FR 10867, July 30, 1964; 36 FR 9850, May 29, 1971; 37 FR 2933, Feb. 10, 1972; 40 FR 6316, Feb. 11, 1975]

REPORTS

§ 1044.30 Monthly reports of receipts and utilization.

On or before the 5th day (exclusive of Sundays and holidays) of each month, each handler shall report to the market administrator for the preceding month in the detail and on forms prescribed by the market administrator as follows:

(a) Each handler for each fluid milk plant shall report:

(1) The quantities of butterfat and skim milk contained in or represented by:

(i) Producer milk,

(ii) Fluid milk products received from other fluid milk plants,

(iii) Other source milk, and

(iv) Inventories of fluid milk products on hand at the end of each month;

(2) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including a separate statement showing in-area and outside area route disposition of filled milk; and

(3) Such other information with respect to sources and disposition as the market administrator may prescribe.

(b) Each handler specified in § 1044.10(b) who operates a partially regulated distributing plant shall report as required in paragraph (a) of this section, except that receipts of milk from dairy farmers shall be reported in lieu of those in producer milk. Such report shall include a separate statement showing the respective amounts of skim milk and butterfat disposed of in the marketing area as Class I milk on routes.

[29 FR 10867, July 30, 1964, as amended at 34 FR 18649, Nov. 22, 1969]

§ 1044.31 Associated producer reports.

Each associated producer, or a cooperative association on his behalf, shall submit in the manner prescribed by the market administrator:

(a) On or before the 5th day after each month of December through June, a statement of the quantity and butterfat test of his milk sold for manufacturing purposes in such month, and

(b) On or before the 15th day after each month of December through June, delivery receipts or other evidence verifying the quantity and butterfat test of his milk sold for manufacturing purposes in such month.

[28 FR 4751, May 11, 1963]

§ 1044.32 Payroll reports.

On or before the 20th day of each month each handler shall report his producer payroll for each fluid milk plant for the preceding month which shall show:

(a) The pounds of milk received from each producer and the percentage of butterfat contained therein;

(b) The date and net amount of payment to such producer or to a cooperative association for such producer's milk, with the price, deductions and charges involved and the nature of each.

[28 FR 4751, May 11, 1963]

§ 1044.33 Other reports.

(a) Each producer-handler shall make reports to the market administrator at such time and in such manner as the market administrator shall request.

(b) Each handler exempt pursuant to §§ 1044.81 or 1044.82 shall report to the market administrator his disposition of fluid milk products on routes within the marketing area at such time and in such manner as the market administrator shall prescribe.

(c) Each handler pursuant to § 1044.10(d) shall report to the market administrator in detail and on forms prescribed by the market administrator on or before the 5th day of each month the quantities of skim milk and butterfat in producer milk delivered to each fluid milk plant in the preceding month.

[29 FR 10867, July 30, 1964]

CLASSIFICATION

§ 1044.40 Skim milk and butterfat to be classified.

All skim milk and butterfat required to be reported pursuant to § 1044.30 shall be classified (separately as skim milk and butterfat), pursuant to §§ 1044.41 through 1044.45.

[27 FR 4051, Apr. 28, 1962]

§ 1044.41 Classes of utilization.

Subject to the conditions set forth in §§ 1044.42 and 1044.43 the classes of utilization shall be as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of fluid milk products (except as provided in paragraphs (b) (3) and (4) of this section); and

(2) Not accounted for as Class II milk.

(b) *Class II milk.* Class II milk shall be:

(1) Skim milk and butterfat used to produce any product other than a fluid milk product;

(2) Skim milk and butterfat in inventories of fluid milk products on hand at the end of the month;

(3) Skim milk in fluid milk products disposed of for livestock feed or dumped subject to prior notification to and verification (at his discretion) by the market administrator;

(4) Skim milk represented by the nonfat milk solids added to a milk product which is in excess of the weight of an equivalent volume of the fluid milk product prior to such addition;

(5) Skim milk and butterfat, respectively (except in milk diverted to a nonfluid milk plant pursuant to § 1044.14), in shrinkage but not in excess of:

(i) 2.0 percent of producer milk except that received from a handler pursuant to § 1044.10(d);

(ii) Plus 1.5 percent of producer milk received from a handler pursuant to § 1044.10(d); *Provided,* That if the handler receiving such producer milk files notice with the market administrator that he is purchasing such milk on the basis of farm weights, the applicable percentage pursuant to this subdivision shall be 2.0 percent;

(iii) Plus 1.5 percent of bulk fluid milk products from fluid milk plants of other handlers;

(iv) Plus 1.5 percent of fluid milk products in bulk from other order plants, exclusive of the quantity for which Class II utilization was requested by the operators of both plants;

(v) Plus 1.5 percent of fluid milk products in bulk from unregulated supply plants, exclusive of the quantity for which Class II utilization was requested by the handler; and

(vi) Less 1.5 percent of bulk fluid milk products transferred to other plants; and

(6) Skim milk and butterfat in shrinkage assigned pursuant to § 1044.42 (b)(2).

[27 FR 4051, Apr. 28, 1962, as amended at 29 FR 10867, July 30, 1964]

§ 1044.42 Shrinkage.

The market administrator shall allocate shrinkage over a handler's receipts for each of his fluid milk plants as follows:

(a) Compute the total shrinkage of skim milk and butterfat, respectively, at each fluid milk plant; and

(b) Prorate the resulting amounts between receipts of skim milk and butterfat contained in:

(1) The net quantity of producer milk and other fluid milk products specified in § 1044.41(b)(5); and

(2) Other source milk exclusive of that specified in § 1044.41(b)(5).

[29 FR 10867, July 30, 1964]

§ 1044.43 Transfers.

Skim milk or butterfat in the form of a fluid milk product shall be classified:

(a) At the utilization indicated by the operators of both plants, otherwise as Class I milk, if transferred from a fluid milk plant to another fluid milk plant, subject in either event to the following conditions:

(1) The skim milk or butterfat so assigned to either class shall be limited to the amount thereof remaining in such class in the transferee plant after computations pursuant to § 1044.46(a)(7) and the corresponding step in § 1044.46(b);

(2) If the transferor plant received during the month other source milk to be allocated pursuant to § 1044.46(a)(3), the skim milk and butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor handler received during the month other source milk to be allocated pursuant to § 1044.46(a)(7) and the corresponding step of § 1044.46(b), the skim milk and butterfat so transferred up to the total of such receipts shall not be classified as Class I milk to a greater extent than would be applicable to a like quantity of such other source milk received at the transferee plant;

(b) As Class I milk, if transferred from a fluid milk plant to a producer-handler or an exempt handler pursuant to § 1044.81;

(c) As Class I milk, if transferred or diverted in bulk to a nonfluid milk plant that is neither an other order plant nor a producer-handler plant unless the requirements of paragraphs (c)(1) and (2) of this section are met, in which case the skim milk and butterfat so transferred or diverted shall be classified in accordance with the assignment resulting from paragraph (c)(3) of this section:

(1) The transferring or diverting handler claims classification pursuant to the assignment set forth in paragraph (c)(3) of this section in his report submitted to the market administrator pursuant to § 1044.30 for the month within which such transaction occurred;

(2) The operator of such nonfluid milk plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for the purpose of verification; and

(3) The skim milk and butterfat so transferred shall be classified on the basis of the following assignment of utilization at such nonpool plant in excess of receipts of packaged fluid milk products from all fluid milk plants and other order plants:

(i) Any Class I utilization disposed of on routes in the marketing area shall be first assigned to the skim milk and butterfat in the fluid milk products so transferred or diverted from fluid milk plants, next pro rata to receipts from other order plants and thereafter to receipts from dairy farmers who the market administrator determines constitute regular sources of supply of milk for such nonfluid milk plant;

(ii) Any Class I utilization disposed of on routes in the marketing area of another order issued pursuant to the Act shall be first assigned to receipts from plants fully regulated by such order, next pro rata to receipts from other order plants not regulated by such order, and thereafter to receipts from dairy farmers who the market administrator determines constitute regular sources of supply for such nonfluid milk plant;

(iii) Class I utilization in excess of that assigned pursuant to paragraphs (c)(3)(i) and (ii) of this section shall be assigned first to remaining receipts from dairy farmers who the market administrator determines constitute the regular source of supply for such nonfluid milk plant and Class I utilization in excess of such receipts shall be assigned pro rata to unassigned receipts at such nonfluid milk plant from all fluid milk and other order plants; and

(iv) To the extent that Class I utilization is not so assigned to it, the skim milk and butterfat so transferred shall be classified as Class II milk; and

(d) As follows, if transferred to an other order plant in excess of receipts from such plant in the same category as described in paragraph (d)(1), (2) or (3) of this section:

(1) If transferred in packaged form, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated as a fluid milk product under the other order (including allocation under the conditions set forth in paragraph (d)(3) of this section);

(3) If the operators of both the transferor and transferee plants so request in the reports of receipts and utilization filed with their respective market administrators, transfers in bulk form shall be classified as Class II to the extent of the Class II utilization (or comparable utilization under such other order) available for such assignment pursuant to the allocation provisions of the transferee order;

(4) If information concerning the classification to which allocated under the other order is not available to the market administrator for purposes of establishing classification pursuant to this paragraph, classification shall be as Class I subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

(6) If the form in which any fluid milk product is transferred to an other order plant is not defined as a fluid milk product under such other order, classification shall be in accordance with the provisions of § 1044.41.

[29 FR 10868, July 30, 1964, as amended at 34 FR 18649, Nov. 22, 1969]

§ 1044.45 Computation of skim milk and butterfat in each class.

For each month the market administrator shall correct for mathematical and obvious errors the monthly report submitted by each handler and compute the total pounds of skim milk and butterfat, respectively, in Class I and Class II utilization for such handler: *Provided*, That if any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk disposed of in such product shall be considered to be an amount equivalent to the nonfat milk solids contained in such product, plus all of the water normally associated with such solids in the form of whole milk.

[27 FR 4051, Apr. 28, 1962]

§ 1044.46 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 1044.45, the market administrator shall determine the classification of producer milk at each fluid milk plant each month as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class II the pounds of skim milk classified as Class II pursuant to § 1044.41(b)(5);

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants as follows:

(i) From Class II milk, the lesser of the pounds remaining or two percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(3) Subtract in the order specified below from the pounds of skim milk

remaining in each class, in series beginning with Class II, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products (except filled milk) that are not approved by a duly constituted health authority, and receipts of fluid milk products from unidentified sources;

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order; and

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants;

(4) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II:

(i) The pounds of skim milk in receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to paragraph (a)(3)(iv) of this section, for which the handler requests Class II utilization, but not in excess of the pounds of skim milk remaining in Class II;

(ii) The pounds of skim milk remaining in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to paragraph (a)(3)(iv) of this section, which are in excess of the pounds of skim milk determined as follows:

(*a*) Multiply the pounds of skim milk remaining in Class I milk at all fluid milk plants of the handler by 1.25;

(*b*) Subtract from the result the sum of the pounds of skim milk at all such plants in producer milk, in receipts from other fluid milk plant handlers and in receipts in bulk from other order plants; and

(*c*)(*1*) Multiply any resulting plus quantity by the percentage that receipts of skim milk in fluid milk products from unregulated supply plants, that were not subtracted pursuant to paragraph (a)(3)(iv) of this section remaining at this plant is of all such receipts remaining at all fluid milk plants of such handler, after any deductions pursuant to paragraph (a)(4)(i) of this section.

(*2*) Should such computation result in a quantity to be subtracted from Class II which is in excess of the pounds of skim milk remaining in Class II, the pounds of skim milk in Class II shall be increased to the quantity to be subtracted and the pounds of skim milk in Class I shall be decreased a like amount. In such case the utilization of skim milk at other fluid milk plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other fluid milk plant of such handler at which such adjustment can be made;

(iii) The pounds of skim milk in receipts of fluid milk products in bulk from an other order plant in excess of similar transfers to such plant, but not in excess of the pounds of skim milk remaining in Class II milk, if Class II utilization was requested by the operator of such plant and the handler;

(5) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in inventory of fluid milk products on hand at the beginning of the month;

(6) Add to the remaining pounds of skim milk in Class II milk the pounds subtracted pursuant to paragraph (a)(1) of this section;

(7) Subtract from the pounds of skim milk remaining in each class, pro rata to the total pounds of skim milk remaining in each class in all fluid milk plants of the receiving handler:

(i) The pounds of skim milk in receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to paragraphs (a)(3)(iv), (4)(i) (ii) of this section; and

(ii) (*a*) The pounds of skim milk in receipts of fluid milk products in bulk from an other order plant(s), in excess in each case of similar transfers to the same plant, that were not subtracted pursuant to paragraph (a)(4)(iii) of this section:

(*b*) Should such proration result in the amount to be subtracted from any class exceeding the pounds of skim milk remaining in such class in the fluid milk plant at which such skim milk was received, the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case the utilization of milk at other fluid milk plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other fluid milk plant of such handler at which such adjustment can be made;

(8) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk received in fluid milk products from other fluid milk plants according to the classification assigned pursuant to § 1044.43(a);

(9) If the pounds of skim milk remaining in both classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class II. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) Combine the amounts of skim milk and butterfat determined pursuant to paragraphs (a) and (b) of this section into one total for each class and determine the weighted average butterfat content of producer milk in each class.

[29 FR 10868, July 30, 1964, as amended at 34 FR 18649, Nov. 22, 1969]

MINIMUM PRICES

§ 1044.50 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

[37 FR 2933, Feb. 10, 1972]

§ 1044.51 Class prices.

Subject to the provisions of § 1044.52, the class prices per hundredweight for the month shall be as follows:

(a) *Class I price.* The Class I price for plants located in Zone 1 shall be the basic formula price for the second preceding months plus $1.15. For plants located in Zone 1(a) the price shall be the price specified for Zone 1 less 10 cents; for plants located in Zone 2 the price shall be the price specified for Zone 1 plus 20 cents; and for plants located outside the marketing area and west of Lake Michigan, the price (subject to § 1044.53) shall be that specified for Zone 1 and for plants located outside the marketing area and east of Lake Michigan, the price (subject to § 1044.53) shall be that specified for Zone 2: *Provided,* That from the effective date hereof through March 1975 the Class I price for plants in Zone 1 shall be the basic formula price for the preceding month plus $1.15.

(b) *Class II milk price.* The Class II milk price shall be the basic formula price for the month.

[30 FR 213, Jan. 8, 1965, as amended at 33 FR 20008, Dec. 31, 1968; 40 FR 6316, Feb. 11, 1975]

§ 1044.52 Handler butterfat differential.

If the average butterfat test of Class I milk or Class II milk as computed pursuant to § 1044.46(c) is more or less than 3.5 percent, there shall be added to, or subtracted from, as the case may be, the price for such class of utilization, for each one-tenth of one percent that such average butterfat test is above or below 3.5 percent, a butterfat differential computed by multiplying the butter price by the applicable factor listed, and rounding to the nearest one-tenth cent:

(a) For Class I milk, multiply the butter price for the preceding month by 0.125;

(b) For Class II milk, multiply the butter price for the current month by 0.115.

[27 FR 4052, Apr. 28, 1962, as amended at 29 FR 10869, July 30, 1964]

§ 1044.53 Handler location adjustments.

(a) For milk received at a fluid milk plant located outside the marketing area, west of Lake Michigan and more than 50 miles from the nearer of the City Hall in Ironwood, Michigan, or the City Hall in Iron Mountain, Michigan, the applicable Zone 1 price for Class I milk shall be reduced 10 cents, plus 2 cents for each 20 miles or fraction thereof in excess of 70 miles.

(b) For milk received at a fluid milk plant located outside the marketing area, east of Lake Michigan, and more than 50 miles from the City Hall in St. Ignace, Michigan, the applicable Zone 2 price for Class I milk shall be reduced 10 cents, plus 2 cents for each 20 miles or fraction thereof in excess of 70 miles.

(c) Any distance used to determine location adjustments shall be the shortest hard surfaced highway distance as determined by the market administrator.

[27 FR 4052, Apr. 28, 1962]

§ 1044.54 Equivalent price provision.

Whenever the provisions of this part require the market administrator to use a specific price (or prices) for milk or any milk product for the purpose of determining minimum class prices or for any other purpose and the specified price is not reported or published, the market administrator shall use a price determined by the Secretary to be equivalent to or comparable with, the price specified.

[27 FR 4052, Apr. 28, 1962]

HANDLER'S OBLIGATION AND UNIFORM PRICE

§ 1044.60 Computation of the net obligation of each handler.

The net obligation of each handler at fluid milk plant(s) shall be computed by the market administrator as follows:

(a) Multiply the quantity of producer milk in each class, as computed pursuant to § 1044.46(c), by the applicable class prices;

(b) Add the amount obtained from multiplying the overage deducted from each class pursuant to § 1044.46(a)(9) and the corresponding step of § 1044.46(b) by the applicable class prices;

(c) Add the amount obtained from multiplying the difference between the Class II price for the preceding month and the Class I price for the current month by the lesser of:

(1) The hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1044.46(a)(5) and the corresponding step of § 1044.46(b); or

(2) The hundredweight of skim milk and butterfat remaining in Class II (exclusive of shrinkage) after computations pursuant to § 1044.46(a)(7)(i) and the corresponding step of § 1044.46(b) for the preceding month; and

(d) Add or subtract, as the case may be, the amount necessary to correct errors in receipts or utilization for previous months as disclosed by audit by the market administrator.

[29 FR 10869, July 30, 1964]

§ 1044.61 Computation of uniform price.

For each month the market administrator shall compute the uniform price for each handler as follows:

(a) To the value obtained pursuant to § 1044.60, add or subtract for each one-tenth percent that the average butterfat content of producer milk received by such handler is less or more, respectively, than 3.5 percent an amount computed by multiplying such difference by the butterfat differential computed pursuant to § 1044.62 and multiplying the result by the hundredweight of such milk;

(b) Add the value of the handler's associated producer milk at the Class II price for milk of 3.5 percent butterfat content;

(c) Add if a deduction was made or subtract if an addition was made, in computing the uniform price for such handler to the nearest cent for the preceding month, the amount of such adjustment;

(d) Add an amount equal to the sum of the producer location deductions to be made pursuant to § 1044.63; and

(e) Divide the resulting amount by the handler's total hundredweight of producer milk and associated producer milk. The quotient, rounded to the nearest cent, shall be the handler's uniform price.

[28 FR 4751, May 11, 1963]

§ 1044.62 Producer butterfat differential.

The applicable uniform prices to be paid pursuant to § 1044.70 to producers delivering milk to each handler shall be increased or decreased for each one-tenth of one percent which the butterfat content of his milk is above or below 3.5 percent, respectively, by a butterfat differential equal to the average of the butterfat differentials determined pursuant to paragraphs (a) and (b) of § 1044.52, weighted by the pounds of butterfat in producer milk used by such handler in each class and the result rounded to the nearest tenth of a cent.

[27 FR 4052, Apr. 28, 1962]

§ 1044.63 Producer location differentials.

For each handler operating two or more fluid milk plants at which different Class I prices are applicable pursuant to § 1044.51 or § 1044.53, the uniform price pursuant to § 1044.61 at each such plant shall be reduced by the amount that its applicable Class I price is less than the highest Class I price applicable at such handler's fluid milk plants during the month.

[28 FR 4752, May 11, 1963, as amended at 30 FR 213, Jan. 8, 1965]

PAYMENT FOR MILK

§ 1044.70 Time and method of payment.

(a) Except as provided in paragraph (b) or (c) of this section, on or before the 15th day after the end of each month each handler who received milk from producers shall pay for milk received during such month to each producer for milk received from him the uniform price as provided in § 1044.61 adjusted by the butterfat differential pursuant to § 1044.62 and the location adjustment pursuant to § 1044.63.

(b)(1) Upon receipt of a written request from a cooperative association which the Secretary determines is authorized by its members to collect payment for their milk and receipt of a written promise to reimburse the handler the amount of any actual loss incurred by him because of any claim on the part of the association, each handler shall pay to the cooperative association on or before the 13th day of each month, in lieu of payments pursuant to paragraph (a) of this section, an amount equal to the gross sum due for all milk received from certified members, less amount owing by each member-producer to the handler for supplies purchased from him on prior written order or as evidenced by a delivery ticket signed by the producer and submitted to the cooperative association on or before the 13th day of each month, written information which shows for each such member-producer:

(i) The total pounds of milk received from him during the preceding month,

(ii) The total pounds of butterfat contained in such milk,

(iii) The number of days on which milk was received, and

(iv) The amounts withheld by the handler in payment for supplies sold. The foregoing payment and submission of information shall be made with respect to milk of each producer whom the cooperative association certifies is a member, which is received on and after the first day of the month next following receipt of such certification through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the association.

(2) A copy of each such request, promise to reimburse, and a certified list of members shall be filed simultaneously with the market administrator by the association and shall be subject to verification at his discretion, through audit of the records of the cooperative association pertaining thereto. Exceptions, if any, shall be made by written notice to the market administrator, and shall be subject to his determination.

(c) Each handler shall make payment to a cooperative association for milk received from the fluid milk plant of such cooperative association, on or before the 10th day after the end of the month in which it was received, at not less than the applicable class prices.

(d) On or before the 15th day after each month of December through June, each handler shall remit to the market administrator for payment to associated producers, an amount obtained by multiplying the quantity of his associated producer milk for the month by the difference between his uniform price and the Class II price: *Provided*, That remittances to the market administrator pursuant to this paragraph shall be maintained by him in a separate fund out of which he shall make payments to associated producers on or before the 17th day after each month of December through June.

[27 FR 4053, Apr. 28, 1962, as amended at 28 FR 4752, May 11, 1963]

§ 1044.71 Expense of administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 13th day after the end of the month 5 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to (a) producer milk (including such handler's own production) and (b) other source milk allocated to Class I pursuant to § 1044.46(a)(3) and (7)(i) and the corresponding steps of § 1044.46(b).

[29 FR 10869, July 30, 1964]

§ 1044.72 Marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments pursuant to § 1044.70 for milk received from each producer (excluding milk of such handler's own production) at a plant not operated by a cooperative association of which such producer is a member, shall deduct 6 cents per hundredweight, or such amount not exceeding 6 cents per hundredweight, as the Secretary may prescribe, and on or before the 13th day after the end of each month shall pay such deductions to the market administrator. Such monies shall be used by the market administrator to verify weights, samples and tests of milk received from producers and to provide producers with market information, such services to be performed by the market administrator or by an agent engaged by and responsible to him.

(b) In the case of producers whose milk is received at a fluid milk plant not operated by a cooperative association of which such producers are members, and for whom a cooperative association is actually performing the services described in paragraph (a) of this section, as determined by the Secretary, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions from payments required pursuant to § 1044.70 as may be authorized by such producers, and pay such deductions on or before the 13th day after the end of the month to the cooperative association rendering such services of which such producers are members.

(c) In making payments to associated producers pursuant to the proviso of § 1044.70(d), the market administrator shall deduct the applicable amounts prescribed for producer milk in paragraphs (a) and (b) of this section for such milk.

[27 FR 4053, Apr. 28, 1962, as amended at 28 FR 4752, May 11, 1963]

§ 1044.73 Errors in payment.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses adjustments to be made for any reason, which result in monies due:

(a) To the market administrator from such handler,

(b) To such handler from the market administrator, or

(c) To any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any such amount due; and payment thereof shall be made on or before the next date for making payment set forth in the provision under which such error occurred, following the 5th day after such notice.

[27 FR 4053, Apr. 28, 1962]

§ 1044.74 Overdue accounts.

Any unpaid obligation of a handler or of the market administrator pursuant to §§ 1044.71, 1044.72 and 1044.73 shall be increased one-half of one percent on the first day of the month next following the due date of such obligation and on the first day of each month thereafter until such obligation is paid.

[27 FR 4053, Apr. 28, 1962]

APPLICATION OF PROVISIONS

§ 1044.80 Producer-handler exemption.

Only §§ 1044.33 and 1000.5 of this chapter, as incorporated by § 1044.1, shall apply to a producer handler.

[36 FR 9850, May 29, 1971]

§ 1044.81 Exempt handler.

Only §§ 1044.33 and 1000.5 of this chapter, as incorporated by § 1044.1, shall apply to a handler who operates a fluid milk plant, of the type specified in § 1044.8(a), located outside the marketing area from which an average of less than 600 pounds of fluid milk products per day are disposed of during the month in the marketing area on route(s).

[36 FR 9850, May 29, 1971]

§ 1044.82 Handlers subject to other Federal orders.

The provisions of this part shall not apply to a handler with respect to the operation of a fluid milk plant during any month in which the milk at such plant would be subject to the classification, pricing and payment provisions of another marketing agreement or order issued pursuant to the Act and the disposition of fluid milk products, except filled milk, in the other Federal marketing area exceeds that in the Michigan Upper Peninsula marketing area: *Provided*, That the operator of a fluid milk plant which is exempted from the provisions of this part pursuant to this section shall, with respect to the total receipts and utilization or disposition of skim milk and butterfat at such plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

[34 FR 18650, Nov. 22, 1969]

PART 1046—MILK IN LOUISVILLE-LEXINGTON-EVANSVILLE MARKETING AREA

Subpart—Order Regulating Handling

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AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended (7 U.S.C. 601-674).

SOURCE: 39 FR 15427, May 3, 1974, unless otherwise noted.

Subpart—Order Regulating Handling

GENERAL PROVISIONS

§ 1046.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1046.2 Louisville-Lexington-Evansville marketing area.

The "Louisville-Lexington-Evansville marketing area" hereinafter called the "marketing area", means all the territory geographically within the counties listed below and all territory wholly or partly therein occupied by municipal corporations and institutions owned or operated by Federal, State or local governments:

INDIANA COUNTIES

Clark, Crawford, Daviess, Dubois, Floyd, Gibson, Harrison, Knox, Martin, Orange, Perry, Pike, Posey, Spencer, Vanderburgh, Warrick, Washington.

KENTUCKY COUNTIES

Adair, Anderson, Bourbon, Boyle, Breckinridge, Bullit, Butler, Casey, Clark, Clinton, Cumberland, Daviess, Edmonson, Fayette, Franklin, Garrard, Grayson, Green, Hancock, Hardin, Hart, Henderson, Henry, Hopkins, Jefferson, Jessamine, Larue, Lincoln, Logan, Madison, Marion, McLean, Meade, Mercer, Muhlenberg, Nelson, Ohio, Oldham, Pulaski, Russell, Scott, Shelby, Spencer, Taylor, Union, Washington, Wayne, Webster, Woodford.

§ 1046.3 Route disposition.

"Route disposition" means delivery (including disposition from a plant store or from a distribution point and distribution by a vendor) of a fluid milk product(s) classified as Class I milk to a wholesale or retail outlet(s) other than to a milk or filled milk plant(s). A delivery through a distribution point shall be attributed to the plant from which the Class I milk is moved through a distribution point to wholesale or retail outlets without intermediate movement to another milk or filled milk plant.

§ 1046.4 [Reserved]

§ 1046.5 City plant.

"City plant" means a plant where milk is processed or packaged and from which there is route disposition in the marketing area of fluid milk products permitted to be labeled as "Grade A" by a duly constituted health authority.

§ 1046.6 Country plant.

"Country plant" means a milk plant, other than a city plant, which is approved by a duly constituted health authority to supply milk or skim milk to a city plant(s) for disposition as "Grade A" milk and at which milk is received during the month from persons described in § 1046.12(a)(1) or from a handler described in § 1046.9(c).

§ 1046.7 Pool plant.

Except as provided in paragraph (e) of this section, "pool plant" means:

(a) A city plant which meets the following requirements:

(1) For each of the months of May through October not less than 30 percent and for each of the months of November through April not less than 50 percent of the fluid milk products, except filled milk, received during the 2 months immediately preceding from persons described in § 1046.12(a)(1), from a handler described in § 1046.9(c), from country plants and from pool plants in containers not larger than a gallon is disposed of as Class I milk, except filled milk from such plant during such 2-month period to all outlets except such disposition to pool plants in containers larger than a gallon: *Provided*, That if such utilization percentage for the 2 preceding months cannot be ascertained by the market administrator, the respective percentages shall apply to receipts and sales during the current month; and

(2) There is an amount of route disposition in the marketing area, except filled milk, equal to not less than an average of 13,500 pounds per day or not less than 10 percent of the fluid milk products, except filled milk, received during the current month from persons described in § 1046.12(a)(1), from a handler described in § 1046.9(c), and from country plants.

(b) A country plant during any of the months of September through February from which not less than 50 percent, and during other months not less than 40 percent, of milk from persons described in § 1046.12(a)(1) and from handlers described in § 1046.9(c) that is physically received at such plant (except by diversion from other plants), or diverted therefrom pursuant to § 1046.13, is shipped to and received at a city plant(s) in the form of milk or skim milk. The operator of a country plant may include milk diverted pursuant to § 1046.13(b) from such plant to a city plant as qualifying shipments in meeting up to one-half of the shipping percentage(s) specified in this paragraph.

(c) In March through August a country plant that was a pool plant pursuant to paragraph (b) of this section each month during the preceding September through February, unless the operator of such plant notifies the market administrator in writing on or before February 15 of withdrawal of the plant from the pool for the months of March through August next following.

(d) A country plant which is operated by a cooperative association if (1) two-thirds or more of the milk from persons described in § 1046.12(a)(1) who are members of such association is delivered during the month from farms to the pool plant(s) of other handlers or transferred by such association from its plant to the pool plant(s) of other handlers or (2) such plant qualified as a pool plant pursuant to paragraph (d)(1) of this section during each of the immediately preceding consecutive months of October through February.

(e) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant; and

(2) Unless determined otherwise by the Secretary, a milk plant during any month in which the milk at such plant would be subject to the pricing and pooling provisions of another order issued pursuant to the Act unless such plant meets the requirements for a pool plant pursuant to paragraph (a), (b), (c) or (d) of this section and a greater volume of fluid milk products, except filled milk, is disposed of from such plant in the Louisville-Lexington-Evansville marketing area to other pool plants and to retail or wholesale outlets than in the marketing area regulated pursuant to such other order during the current month.

[39 FR 15427, May 3, 1974, as amended at 40 FR 43716, Sept. 23, 1975; 47 FR 56487, Dec. 17, 1982]

§ 1046.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of an other order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant other than a producer-handler plant or an other order plant, from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant other than a producer-handler plant or an other order plant, from which fluid milk products are shipped to a pool plant.

§ 1046.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of a pool plant;

(b) Any cooperative association with respect to milk diverted by it in accordance with the conditions set forth in § 1046.13;

(c) Any cooperative association with respect to the milk of its producer members which is delivered for the account of the cooperative association from the farm to the pool plant(s) of another handler in a tank truck owned by, operated by, or under contract to such cooperative association if the cooperative association has notified in writing prior to delivery both the market administrator and the handler to whom the milk is delivered that it wishes to be the handler for such milk. Such milk shall be considered as having been received by the cooperative association at the location of the plant to which it was delivered;

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler; and

(f) Any person who operates an other order plant described in § 1046.7(e).

§ 1046.10 Producer-handler.

"Producer-handler" means any person who processes and packages milk from his own farm production, distributes any portion of such milk as route disposition in the marketing area and receives no fluid milk products from other dairy farmers or nonpool plants and no milk products other than fluid milk products for reconstitution into fluid milk products: *Provided*, That such person provides proof satisfactory to the market administrator that: (a) The care and management of all of the dairy animals and other resources necessary to produce the entire amount of fluid milk handled (excluding transfers from pool plants) is the personal enterprise of and at the personal risk of such person, and (b) the operation of the processing and distributing business is the personal enterprise of and at the personal risk of such person.

§ 1046.11 [Reserved]

§ 1046.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person:

(1) Who produces milk on a dairy farm which is approved by a duly constituted health authority for the production of milk for fluid disposition (this definition shall include approval of milk by the authority to administer the regulations governing the quality of milk acceptable to agencies of the United States Government for fluid consumption in its institutions or bases located in the marketing area during any month in which such milk is disposed of to such institutions or bases); and

(2) Whose milk so produced pursuant to paragraph (a)(1) of this section is received at a pool plant or by a handler described in § 1046.9(c) or diverted in accordance with the conditions set forth in § 1046.13.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1046.44(a)(8)(iii) and the corresponding step of § 1046.44(b);

(3) Any person with respect to milk produced by him which is reported as diverted to an other order plant if any

portion of such person's milk so moved is assigned to Class I under the provisions of such other order; and

(4) A person with respect to any milk produced by him that is received at or diverted from a country plant in any month of March through August, unless at least 60 days' production from the farm of such person was producer milk during the preceding September through February or unless such country plant is a pool plant for the month pursuant to § 1046.7 (b) or (d).

[39 FR 15427, May 3, 1974, as amended at 40 FR 43716, Sept. 23, 1975]

§ 1046.13 Producer milk.

"Producer milk" means that skim milk and butterfat contained in milk of a producer which is:

(a) Received from producers at a pool plant for the account of the person operating such plant. When milk is withdrawn at more than one pool plant from the same load delivered by a farm tank pickup truck, the entire load shall be deemed to have been received at the first pool plant at which any of such milk was withdrawn unless:

(1) There is an agreement among the operators of the pool plants receiving such milk providing for other receiving handler(s) to report and pay for all or a portion of such milk; or

(2) The milk involved is that which is delivered to pool plants for the account of a handler described in § 1046.9(c).

(b) Diverted by a handler from a pool plant pursuant to § 1046.7 (a), (b), or (c) to another pool plant for any number of days of the month. Milk so diverted shall be deemed to have been received by the diverting handler:

(1) At the location of the pool plant from which diverted if no location adjustment or the same location adjustment is applicable at both the plant from which diverted and the plant to which diverted, and

(2) At the location of the pool plant to which diverted if the location adjustment applicable pursuant to § 1046.52 is different at the plant from which diverted than at the plant to which diverted.

(c) Diverted by a handler from a pool plant to a nonpool plant that is not a producer-handler plant, subject to the following conditions:

(1) Such milk shall be accounted for as received by the diverting handler at the location of the nonpool plant to which diverted.

(2) Not less than 2 days' production of a producer whose milk is diverted to a nonpool plant is physically received at a pool plant during the month;

(3) Producer milk pursuant to this paragraph shall not include the milk of any person during September through February on days that it is diverted by a handler to a nonpool plant in excess of 22 days (11 days in the case of every-other-day delivery) during the month; and

(d) Received by a handler described in § 1046.9(c).

[39 FR 15427, May 3, 1974, as amended at 40 FR 43716, Sept. 23, 1975; 40 FR 45158, Oct. 1, 1975; 41 FR 47458, Oct. 29, 1976; 47 FR 56487, Dec. 17, 1982]

§ 1046.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1046.40(b)(1) from any source other than producers, handlers described in § 1046.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1046.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1046.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1046.40(b)(1)) for which the handler fails to establish a disposition.

§ 1046.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form: Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

[39 FR 15427, May 3, 1974, as amended at 40 FR 31943, July 30, 1975]

§ 1046.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1046.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1046.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk or its products for its members.

§ 1046.19 [Reserved]

§ 1046.20 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1046.51a:

(a) *Butter price.* "Butter price" means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) *Cheddar cheese price.* "Cheddar cheese price" means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) *Nonfat dry milk price.* "Nonfat dry milk price" means the simple average, for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Division as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding workday until the day such prices were previously reported. A work-day is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price.* "Edible whey price" means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

[46 FR 43379, Aug. 28, 1981]

HANDLER REPORTS

§ 1046.30 Reports of receipts and utilization.

On or before the 8th day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1046.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1046.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1046.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1046.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described § 1046.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1046.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1046.32 Other reports.

(a) Each handler shall report to the market administrator, as soon as possible after first receiving milk from any producer, the name and address of such producer, the date upon which such milk was first received, and the plant at which such milk was received.

(b) On or before the 10th day after the request of the market administrator, each handler shall submit a schedule of rates which are charged and paid for the transportation of milk from the farm of each producer to such handler's plant. Changes in such schedule of rates and the effective dates thereof shall be reported to the market administrator within 10 days.

(c) In addition to the reports required pursuant to paragraphs (a) and (b) of this section and §§ 1046.30 and 1046.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

(d) Each handler described in § 1046.9 (a), (b) and (c) shall report to the market administrator on or before the 8th day after the end of each month of March through June the aggregate quantity of base milk received from producers during the month, and on or before the 20th day after the end of each month of March through June the pounds of base milk received from each producer during the month.

[39 FR 15427, May 3, 1974, as amended at 48 FR 30346, July 1, 1983]

CLASSIFICATION OF MILK

§ 1046.40 Classes of utilization.

Except as provided in § 1046.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1046.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section, and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1046.15; and

(6) In shrinkage assigned pursuant to § 1046.41(a) to the receipts specified in § 1046.41(a)(2) and in shrinkage specified in § 1046.41 (b) and (c).

§ 1046.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1046.30, the market administrator shall determine the following:

(a) The total shrinkage of skim milk and butterfat, respectively, at each pool plant, which shall be assigned pro rata to:

(1) The quantity of skim milk and butterfat, respectively, that is equal to 50 times the maximum amount that may be computed pursuant to paragraph (b) of this section; and

(2) The quantity of skim milk and butterfat, respectively, in other source milk received in bulk form as fluid milk products or bulk fluid cream products, excluding any such receipts used in the computations pursuant to paragraphs (b) (5) and (6) of this section;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1046.9(c) and in milk diverted to such plant from another pool plant, except that, in either case, if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph (b)(2) shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk

fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraphs (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1046.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1046.42 Classification of transfers and diversions.

(a) *Transfers and diversions to pool plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant or by a handler described in § 1046.9(c) to another handler's pool plant shall be classified as Class I milk unless both handlers request the same classification in another class. In either case, the classification of such transfers or diversions shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant or divertee-plant after the computations pursuant to § 1046.44(a)(12) and the corresponding step of § 1046.44(b);

(2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to § 1046.44(a)(7) or the corresponding step of § 1046.44(b), the skim milk or butterfat so transferred or diverted shall be classified so as to allocate the least possible Class I utilization to such other source milk;

(3) If the transferor-handler or divertor-handler received during the month other source milk to be allocated pursuant to § 1046.44(a) (11) or (12) or the corresponding steps of § 1046.44(b), the skim milk or butterfat, so transferred or diverted, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant or divertee-plant; and

(4) If a specified classification is not claimed by both handlers in the case of transfers or diversions by such a cooperative association, such skim milk and butterfat shall be classified pro rata to the respective amounts remaining in each class at the pool plant of the transferee- or divertee-handler after making the assignments pursuant to § 1046.44(a)(12) and the corresponding step of § 1046.44(b), and after the assignment of milk for which a specified classification has been claimed pursuant to this paragraph.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1046.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraphs (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraphs (d)(2) (ii) through (viii) of this section.

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1046.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants.

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant, and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Garde A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this paragraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this paragraph.

§ 1046.43 General classification rules.

In determining the classification of producer milk pursuant to § 1046.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1046.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1046.9(b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1046.40, 1046.41, and 1046.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1046.9(b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1046.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1046.9(a) for each of his pool plants separately and of each handler described in § 1046.9(b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of

skim milk in shrinkage specified in § 1046.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1046.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1046.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1046.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1046.40(b)(1) that was not subtracted pursuant to paragraphs (a) (4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section;

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor plant; and

(vii) Receipts of milk from a dairy farmer described in § 1046.12(b)(4);

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a) (2), and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a) (2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraphs (a)(8)(ii) (*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class

II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(a) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(b) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, milk from a handler described in § 1046.9(c), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(c) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1046.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraphs (a)(5) and (7)(i) of this section.

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraphs (a)(11)(i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2), (7)(v), and (8)(i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this paragraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this paragraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraphs (a)(7)(vi) and (8)(iii) of this section:

(i) Subject to the provisions of paragraphs (a)(12) (ii), (iii), and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1046.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12)(i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraphs (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available.

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of

fluid milk products and bulk fluid cream products from another pool plant or a handler described in § 1046.9(c) according to the classification of such products pursuant to § 1046.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage."

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

[39 FR 15427, May 3, 1974, as amended at 39 FR 27684, July 31, 1974; 40 FR 43716, Sept. 23, 1975]

§ 1046.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1046.44 (a)(12) and the corresponding step of § 1046.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month, of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1046.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 15th day after the end of each month, report to each cooperative association, which so requests, with respect to milk delivered by such association or by its members to each handler during the month:

(1) The percentage of such receipts classified in each class; and (2) the percentage relationship of such receipts to the total pounds of Class I milk available to assign to such receipts exclusive of the Class I milk disposed of by such handler to the pool plant(s) of other handlers and to nonpool plants. For the purpose of these reports, the milk received from such association shall be treated on a pro rata basis of the total producer milk received by such handler during the month.

CLASS PRICES

§ 1046.50 Class prices.

Subject to the provisions of § 1046.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.70, and plus $0.20 from the effective date hereof through February 1985.

(b) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price computed pursuant to § 1046.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, except that, for each month after the first month in which this paragraph is effective, the final Class II price shall be not less than the Class III price.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1046.51 and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1046.51a.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

[39 FR 15427, May 3, 1974, as amended at 46 FR 43379, Aug. 28, 1981; 49 FR 35931, Sept. 13, 1984]

§ 1046.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less that $4.33.

§ 1046.51a Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1046.51 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1046.20 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following subparagraphs is of the total of the data represented in paragraphs (c) (1) and (2) of this section:

(1) Combine the total American cheese production for the States of

Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

NOTE: The computation of the basic Class II formula price is affected by a determination document published on Sept. 6, 1984 at 49 FR 35078.

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

NOTE: The computation of the basic Class II formula price is affected by a determination document published on Sept. 6, 1984 at 49 FR 35078.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

[46 FR 43379, Aug. 28, 1981, as amended at 49 FR 35078, Sept. 6, 1984]

§ 1046.52 Plant location adjustments for handlers.

(a) For milk received from producers or from a handler described in § 1046.9(c) at a plant 85 miles or more from the City Halls in Louisville and Lexington, Kentucky, and Evansville, Indiana, by the shortest hard-surfaced highway distance as determined by the market administrator and classified as Class I milk (subject to the limitations pursuant to paragraph (b) of this section), the Class I price shall be reduced by a location adjustment of 1.5 cents for each 10 miles or fraction thereof that such plant is from the City Hall in Louisville, Lexington or Evansville, whichever is nearest, except as follows:

(1) For such milk that is physically received at plants located in the Kentucky counties of Bell, Breathitt, Clay, Harlan, Knott, Knox, Laurel, Leslie, Letcher, McCreary, Perry and Whitley, the Class I price shall be increased by a location adjustment of 15 cents; and

(2) Except as provided in paragraph (a)(1) of this section, no location adjustment shall apply at a plant located:

(i) In the marketing area;

(ii) In the State of Kentucky;

(iii) In the State of Tennessee; or

(iv) East of the Mississippi River and south of the southern boundary of Tennessee or the northern boundary of South Carolina.

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned to that Class I disposition at the transferee-plant which is in excess of the sum of receipts at such plant from producers and handlers described in § 1046.9(c), and the volume assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

[39 FR 15427, May 3, 1974, as amended at 41 FR 47458, Oct. 29, 1976]

§ 1046.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month and, for each month after the first month in which this section is effective, the final Class II price for the preceding month; and on or before the 15th day of each month the tentative Class II price for the following month.

[46 FR 43380, Aug. 28, 1981]

§ 1046.51 Equivalent price.

If for any reason a price quotation required by this part for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price which is required.

UNIFORM PRICE

§ 1046.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1046.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1046.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1046.44(a)(14) and the corresponding step of § 1046.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1046.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1046.44(a)(9) and the corresponding step of § 1046.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1046.44(a)(7) (i) through (iv) and (vii) and the corresponding step of § 1046.44(b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1046.44(a)(7)(v) and (vi) and the corresponding step of § 1046.44(b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1046.44(a)(11) and the corresponding step of § 1046.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

(g) With respect to milk marketed on and after the effective date hereof through February 1985, subtract the amount obtained by multiplying the pounds of bulk fluid milk products that were transferred to the handler's pool plant from an other order plant and allocated to Class I milk, by a rate equal to 3.3 cents per hundredweight for each 10 miles of fraction thereof, less any difference (positive only) between the Class I differential applicable at the receiving plant less the Class I differential applicable at the shipping plant.

[39 FR 15427, May 3, 1974, as amended at 40 FR 43716, Sept. 23, 1975; 49 FR 35931, Sept. 13, 1984]

§ 1046.61 Computation of uniform price (including weighted average price and uniform prices for base and excess milk).

(a) The market administrator shall compute the weighted average price for each month and the uniform price for each month of July through February per hundredweight for milk of 3.5 percent butterfat content as follows:

(1) Combine into one total the values computed pursuant to § 1046.60

for all handlers who filed the reports prescribed in § 1046.30 for the month and who made the payments pursuant to § 1046.71 for the preceding month;

(2) Add one-half the unobligated balance in the producer-settlement fund;

(3) Add an amount equal to the total value of the minus location adjustments and subtract an amount equal to the total value of the plus location adjustments computed pursuant to § 1046.75;

(4) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1046.60(f); and

(5) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The resulting figure, rounded to the nearest cent, shall be the weighted average price for each month and the uniform price for the months of July through February.

(b) For each month of March through June, the market administrator shall compute the uniform prices per hundredweight for base milk and for excess milk, each of 3.5 percent butterfat content, as follows:

(1) Compute the total value of excess milk for all handlers included in the computations pursuant to paragraph (a)(1) of this section as follows:

(i) Multiply the hundredweight quantity of excess milk that does not exceed the total quantity of such handlers' producer milk assigned to Class III milk by the Class III price;

(ii) Multiply the remaining hundredweight quantity of excess milk that does not exceed the total quantity of such handlers' producer milk assigned to Class II milk by the Class II price;

(iii) Multiply the remaining hundredweight quantity of excess milk by the Class I price; and

(iv) Add together the resulting amounts;

(2) Divide the total value of excess milk obtained in paragraph (b)(1) of this section by the total hundredweight of such milk and adjust to the nearest cent. The resulting figure shall be the uniform price for excess milk.

(3) From the amount resulting from the computations pursuant to paragraphs (a) (1) through (3) of this section, subtract an amount computed by multiplying the hundredweight of milk specified in paragraph (a)(4)(ii) of this section by the weighted average price;

(4) Subtract the total value of excess milk determined by multiplying the uniform price obtained in paragraph (b)(2) of this section times the hundredwight of excess milk from the amount computed pursuant to paragraph (b)(3) of this section;

(5) Divide the amount calculated pursuant to paragraph (b)(4) of this section by the total hundredweight of base milk included in these computations; and

(6) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (b)(5) of this section. The resulting figure, rounded to the nearest cent, shall be the uniform price for base milk.

[48 FR 30346, July 1, 1983]

§ 1046.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 12th day after the end of each month the applicable uniform price(s) pursuant to § 1046.61 for such month.

[39 FR 15427, May 3, 1974, as amended at 48 FR 30347, July 1, 1983]

PAYMENTS FOR MILK

§ 1046.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1046.71, 1046.76, and 1046.77 subject to the provisions of § 1046.78 and from which he shall make all payments pursuant to §§ 1046.72 and 1046.77: *Provided*, That payments due any handler shall be offset by payments due from such handler.

§ 1046.71 Payments to the producer-settlement fund.

(a) On or before the 15th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1046.60.

(2) The sum of:

(i) The value at the applicable uniform price(s), as adjusted pursuant to § 1046.75, of such handler's receipts of producer milk; and

(ii) The value at the weighted average price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1046.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

[39 FR 15427, May 3, 1974, as amended at 48 FR 30347, July 1, 1983]

§ 1046.72 Payments from the producer-settlement fund.

On or before the 16th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1046.71(a)(2) exceeds the amount computed pursuant to § 1046.71(a)(1): *Provided,* That the market administrator shall offset any payment due any handler against payments due from such handler, and if the balance in the producer-settlement fund is insufficient to make all payments pursuant to this paragraph, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available.

§ 1046.73 Payments to producers and to cooperative associations.

Except as provided in paragraph (c) of this section, each handler shall make payment to each producer for milk received from such producer as follows:

(a) On or before the last day of each month for milk received during the first 15 days of the month from such producer who has not discontinued delivery of milk to such handler, at not less than the Class III price for the preceding month or 90 percent of the weighted average price for the preceding month, whichever is higher. If the producer had no established base upon which to receive payments during the base-paying months of March through June, the applicable rate for making payments to such producer pursuant to this paragraph shall be the Class III price for the preceding month.

(b) On or before the 17th day of the following month, an amount equal to not less than the uniform price(s), as adjusted pursuant to §§ 1046.74 and 1046.75, multiplied by the hundredweight of milk or base milk and excess milk received from such producer during the month subject to the following adjustments:

(1) Plus or minus adjustments for errors made in previous payments to such producer;

(2) Minus payments made to such producer pursuant to paragraph (a) of this section;

(3) Minus deductions for marketing services made pursuant to § 1046.86, and

(4) Minus proper deductions authorized by such producer which, in the case of a deduction for hauling, shall be in writing and signed by such producer or, in the case of members of a cooperative association which is marketing the producer's milk, by such association.

(c)(1) Upon receipt of a written request from a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and receipt of a written promise to reimburse the handler the amount of any actual loss incurred by him because of any improper claim on the part of the cooperative association in lieu of payments pursuant to paragraphs (a) and (b) of this section, each handler shall pay to the cooperative association on or before the second day prior to the dates specified in paragraphs (a) and (b), respectively, of this section, an amount equal to the sum of the individual payments otherwise payable to such producers without the deductions provided by paragraphs (b)(2) and (3) of this section: *Provided*, That deductions for supplies authorized by such producer may be made. The foregoing payment shall be made with respect to milk of each producer whom the cooperative association certifies is a member effective on and after the first day of the month next following receipt of such certification through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the cooperative association.

(2) A copy of each such request, promise to reimburse and certified list of members shall be filed simultaneously with the market administrator by the cooperative association and shall be subject to verification at his discretion through audit of the records of the cooperative association pertaining thereto. Exceptions, if any, to the accuracy of such certification by a producer claimed to be a member, or by a handler, shall be made by written notice to the market administrator and shall be subject to his determination.

(d) In making the payments to producers pursuant to paragraph (b) of this section, each handler shall furnish each producer a supporting statement which shall show the following:

(1) The month and identity of the producer;

(2) The total pounds and the average butterfat content of milk received from such producer;

(3) For the months of March through June the total pounds of base milk received from the producer;

(4) The minimum rate(s) at which payment to the producer is required under the order;

(5) The rate(s) used in making the payment if such rate(s) is other than the applicable minimum rate(s);

(6) The amount or rate per hundredweight and nature of each deduction claimed by the handler; and

(7) The net amount of payment to such producer.

(e) In making payments to a cooperative association pursuant to paragraph (c) of this section, each handler shall report to such cooperative association for each such producer on forms approved by the market administrator as follows:

(1) On or before the 20th day of the month, the total pounds of milk received during the first 15 days of such month;

(2) On or before the 7th day of the following month, the total pounds of milk received each month, together with the butterfat content of such milk and the amount of deductions claimed by such handler; and

(3) On or before the 7th day after the end of each month of March through June, the total pounds of base milk received.

(f) Each handler shall pay to the cooperative association for milk received from it as a handler described in § 1046.9(c) as follows:

(1) On or before 2 days prior to the last day of the month for milk received during the first 15 days of the month, an amount computed at not less than the applicable rate pursuant to paragraph (a) of this section, and

(2) On or before the 10th day of the following month for milk received

during the month an amount computed at not less than the value of such milk at the minimum prices for milk in each class, as adjusted by the butterfat differential specified in § 1046.74, that are applicable at the location of the receiving handler's pool plant, less the payment made pursuant to paragraph (f)(1) of this section.

[39 FR 15427, May 3, 1974, as amended at 40 FR 43717, Sept. 23, 1975; 48 FR 30347, July 1, 1983]

§ 1046.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform prices shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

[39 FR 15427, May 3, 1974, as amended at 48 FR 30347, July 1, 1983]

§ 1046.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price and the uniform price for base milk received at a plant shall be adjusted according to the location of the plant at the rates set forth in § 1046.52; and

(b) For purposes of computations pursuant to §§ 1046.71 and 1046.72 the weighted average price shall be adjusted at the rates set forth in § 1046.52 applicable at the location of the nonpool plant(s) from which the milk was received, except that the adjusted weighted average price shall not be less than the Class III price.

[41 FR 47458, Oct. 29, 1976, as amended at 48 FR 30347, July 1, 1983]

§ 1046.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1046.30(b) and 1046.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section.

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the weighted average price, both prices to be applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1046.60 for the partially regulated distributing plant if the plant had

been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plants.

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1046.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1046.60 for such handler shall include, in lieu of the value of other source milk specified in § 1046.60(f) less the value of such other source milk specified in § 1046.71(a)(2)(ii), a value of milk determined pursuant to § 1046.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1046.7(b) and (c) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1046.30(b) and 1046.31(b) similar reports for each such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(*c*) The value of milk determined pursuant to § 1046.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1046.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1046.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

§ 1046.77 Adjustment of accounts.

Whenever verification by the market administrator of payments by any handler discloses errors made in payments to the producer-settlement fund, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 15 days, make payment to the market administrator of the amount so billed. Whenever such verification discloses that payment is due from the market administrator to any handler, pursuant to § 1046.72, the market administrator shall, within 15 days, make such payment to such handler. Whenever verification by the market administrator of the payment by a handler to any producer for milk received by such handler discloses payment of less than is required by § 1046.73, the handler shall pay any amount so due not later than the time of making payment to producers next following such disclosure.

§ 1046.78 Charges on overdue accounts.

Any unpaid obligation of a handler or of the market administrator pursuant to § 1046.71, § 1046.72, § 1046.73, § 1046.76, § 1046.77, § 1046.85, or § 1046.86 shall be increased one-half of one percent on the first of the month next following the due date of such obligation and on the first day of each month thereafter until such obligation is paid.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1046.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler, excluding a handler described in § 1046.9(c), shall pay to the market administrator on or before the 15th day after the end of the month three cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including such handler's own production) and milk received from a handler described in § 1046.9(c);

(b) Other source milk allocated to Class I pursuant to § 1046.44(a)(7) and (11) and the corresponding steps of § 1046.44(b), except such other source milk that is excluded from the computations pursuant to § 1046.60(d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1046.76(a)(2).

§ 1046.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers pursuant to § 1046.73(b), shall deduct 5 cents per hundredweight, or such amount not in excess thereof as the Secretary may prescribe, with respect to all milk received by such handler from producers (other than such handler's own farm production) during the month and shall pay such deductions to the market administrator on or before the 15th day after the end of such month. Such moneys shall be used by the market administrator to verify weights, samples, and tests of milk received from such producers and to provide such producers with market information. Such services shall be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him.

(b) Each cooperative association which is actually performing the services described in paragraph (a) of this section, as determined by the market administrator, may file with a handler a claim for authorized deductions from the payments otherwise due to its producer members for milk delivered to such handler. Such claim shall contain a list of the producers for whom such deductions apply, an agreement to indemnify the handler in the making of the deductions, and a certification that the association has an unterminated membership contract with each producer. In making payments to producers for milk received during the month, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, deductions in accordance with the association's claim and shall pay the amount deducted to the association within 15 days after the end of the month.

BASE EXCESS PLAN

SOURCE: Sections 1046.90 through 1046.94 appear at 48 FR 30347, July 1, 1983, unless otherwise noted.

§ 1046.90 Base milk.

"Base milk" means the producer milk of a producer in each month of March through June that is not in excess of the producer's base multiplied by the number of days in the month, except that for the months of March 1985 through June 1985 base milk shall be determined by the producer's base multiplied by the number of days in the month times the percentage of the producer's production pooled pursuant to § 1046.13.

[49 FR 35931, Sept. 13, 1984]

§ 1046.91 Excess milk.

"Excess milk" means the producer milk of a producer in each month of March through June in excess of the producer's base milk for the month, and shall include all the producer milk in such months of a producer who has no base.

§ 1046.92 Computation of base for each producer.

(a) Subject to § 1046.93, the base for each producer shall be an amount obtained by dividing the total pounds of producer milk delivered by such producer during the immediately preceding months of September through December by the number of days' production represented by such producer milk or by 100, whichever is more. If a producer operated more than one farm at the same time, a separate computation of base shall be made for each such farm. For producer bases to be calculated on or before February 1, 1985, and subject to § 1046.93, the base to be calculated for each producer shall be an amount obtained by dividing the total pounds of his producer milk (as defined under the respective orders) received from the producer by all handlers fully regulated under the terms of the respective orders regulating the handling of milk in the Georgia; Tennessee Valley; Louisville-Lexington-Evansville; Alabama-West Florida; Memphis, Tennessee; Nashville, Tennessee; Fort Smith, Arkansas; and Central Arkansas marketing areas (Parts 1007, 1011, 1046, 1093, 1097, 1098, 1102, and 1108, respectively, of this chapter) during the immediately preceding months of September through December 1984 by the number of days' production represented by such producer milk or by 100, whichever is more.

(b) The base for a producer whose milk was delivered to a nonpool plant that became a pool plant after the beginning of the base-forming period (September-December) shall be calculated as if the plant were a pool plant for the entire base-forming period. A base thus assigned shall not be transferable. For bases calculated from the September-December 1984 base-forming period, the base for a producer whose milk was delivered to a plant that did not become a pool plant under any of the orders specified in paragraph (a) of this section until after the beginning of the base-forming period shall be calculated as if the plant were a pool plant under such orders for the entire base-forming period. A base thus assigned shall not be transferable.

[48 FR 30347, July 1, 1983, as amended at 49 FR 35931, Sept. 13, 1984]

§ 1046.93 Base rules.

(a) Except as provided in § 1046.92(b) and in paragraph (b) of this section, a base may be transferred in its entirety or in amounts of not less than 300 pounds effective on the first day of the month following the date on which an application for such transfer is received by the market administrator. Base may be transferred only to a person who is or will be a producer by the end of the month that the transfer is to be effective. An application for a base transfer shall be on a form approved by the market administrator and signed by the baseholder or the baseholder's heirs and the person or persons to whom the base is to be transferred. If a base is held jointly, the application must be signed by all joint holders or their heirs.

(b) A producer who transferred base on or after February 1 may not receive by transfer additional base that would be applicable during March through June of the same year. A producer who received base by transfer on or after February 1 may not transfer a portion of the base to be applicable during March through June of the same year, but may transfer the entire base.

(c) The base established by a partnership may be divided between the partners on any basis agreed to in writing by them if written notification of the agreed-upon division of base signed by each partner is received by the market administrator prior to the first day of the month in which such division is to be effective.

(d) Two or more producers in a partnership may combine their separately established bases by giving notice to the market administrator prior to the first day of the month in which such combination of bases is to be effective.

(e) The base assigned a person who was a producer during any of the immediately preceding months of September through December may be increased up to 90 percent of such producer's average daily producer milk deliveries in the month immediately preceding the month during which a condition described in paragraph (e) (1), (2), or (3) of this section occurred, providing such producer submitted to the market administrator in writing on or before March 1 a statement that established to the satisfaction of the market administrator that in the immediately preceding September through December base-forming period the amount of milk produced on such producer's farm was substantially reduced because of conditions beyond the producer's control, which resulted from:

(1) The loss by fire or windstorm of a farm building used in the production of milk on the producer's farm;

(2) Brucellosis, bovine tuberculosis or other infectious diseases in the producer's milking herd as certified by a licensed veterinarian; or

(3) A quarantine by a Federal or State authority that prevents the producer from supplying milk from the farm to a plant.

§ 1046.94 Announcement of established bases.

On or before February 1 of each year, the market administrator shall calculate a base for each person who was a producer during any of the immediately preceding months of September through December and shall notify each producer and the handler receiving milk from such producer of the base established by the producer. In lieu of notifying each individual producer-member of a cooperative association, the market administrator shall notify the cooperative association of each member's base if requested to do so by the cooperative association.

PART 1049—MILK IN THE INDIANA MARKETING AREA

Subpart—Order Regulating Handling

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Authority: Secs. 1-19, 48 Stat. 31, as amended; (7 U.S.C. 601-674).

Source: 39 FR 31288, Aug. 28, 1974, unless otherwise noted.

Subpart—Order Regulating Handling

General Provisions

§ 1049.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

Definitions

§ 1049.2 Indiana marketing area.

"Indiana marketing area" (hereinafter referred to as the "marketing area") means all of the territory within the boundaries of the following counties, including territory wholly or partly within such boundaries occupied by Government (municipal, State, or Federal) reservations, installations, institutions or other similar establishments:

(a) In Indiana, the counties of:

Adams, Allen, Bartholomew, Blackford, Boone, Brown, Cass, Clay, Clinton, Decatur, De Kalb, Delaware, Elkhart, Fayette, Fountain, Franklin, Fulton, Grant, Hamilton, Hancock, Hendricks, Henry, Howard, Huntington, Jackson, Jay, Jefferson, Jennings, Johnson, Kosciusko, Lagrange, Lake, La Porte, Lawrence, Madison, Marion, Marshall, Miami, Monroe, Montgomery, Morgan, Noble, Owen, Parke, Porter, Putnam, Randolph, Ripley, Rush, St. Joseph, Shelby, Starke, Steuben, Switzerland, Tippecanoe, Tipton, Union, Vermillion, Vigo, Wabash, Warren, Wayne, Wells, Whitley.

(b) In Michigan, the counties of:

Berrien, Branch, Cass, St. Joseph.

[42 FR 56950, Oct. 31, 1977]

§ 1049.3 Route disposition.

"Route disposition" means a delivery (including that custom-packaged for another person, disposition from a plant store or from a distribution point and distribution by a vendor or vending machine) of any fluid milk product classified as Class I milk other than a delivery in bulk form to any milk or filled milk processing plant.

§ 1049.4 [Reserved]

§ 1049.5 Distributing plant.

"Distributing plant" means a plant approved by any duly constituted health authority for the processing or packaging of milk for fluid consumption in the marketing area and from which there is route disposition during the month in the marketing area.

§ 1049.6 Supply plant.

"Supply plant" means a plant in which some milk approved by any duly constituted health authority for fluid consumption in the marketing area is assembled and shipped in bulk as milk or skim milk to a distributing plant during the month.

§ 1049.7 Pool plant.

Except as provided in paragraph (c) of this section, "pool plant" means:

(a) A distributing plant with:

(1) Total route disposition, exclusive of packaged fluid milk products received from other plants and filled milk, in an amount not less than 50 percent of Grade A milk received at such plant (excluding receipts of milk diverted from another plant pursuant to § 1049.13) during the month from dairy farmers, supply plants, and handlers pursuant to § 1049.9(c), except that a plant meeting such percentage requirement for the preceding month may remain qualified under this paragraph in the current month; and

(2) Route disposition within the marketing area during the month of at least 10 percent of such receipts, such route disposition to be exclusive of packaged fluid milk products received from other plants and filled milk: *Provided*, That any plant meeting the requirements of this paragraph in each of the months of September through May, inclusive, shall continue to have pool plant status in the months of June, July, and August, immediately following if there is route disposition, except filled milk, from the plant in the marketing area during such month.

(b) A supply plant from which not less than 50 percent of the Grade A milk received from dairy farmers and handlers pursuant to § 1049.9(c) at such plant during the month is shipped to plants qualifying for the month pursuant to paragraph (a) of this section. A plant qualified pursuant to this paragraph in each of the immediately preceding months of September through February shall remain so qualified for the months of April through August unless written application is filed with the market administrator on or before the first day of any such month to designate such plant as a nonpool plant for such month and for each subsequent month through August during which it would otherwise not qualify under this paragraph.

(c) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A distributing plant from which the Secretary determines there is a greater proportion of route disposition (except filled milk) in another marketing area regulated by another order issued pursuant to the Act and such plant is fully subject to regulation of such other order: *Provided*, That a distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which it has a greater proportion of its route disposition (except filled milk) in such other marketing area, unless, notwithstanding the provisions of this paragraph, it is regulated by such other order.

(3) A distributing plant which meets the requirements of paragraph (a) of this section which also meets the requirements of another order on the basis of its route disposition in such other marketing area and from which the Secretary determines there is a greater quantity of route disposition (except filled milk) during the month in this marketing area than in such other marketing area but which plant is nevertheless fully regulated under such other order.

(4) A supply plant which during the month is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act, unless such plant is qualified as a pool plant pursuant to paragraph (b) of this section and a greater volume of fluid milk products (except filled milk)

is moved to pool distributing plants qualified on the basis of route disposition in this marketing area; and

(5) That portion of a plant that is physically separated from the Grade A portion of such plant, is operated separately and is not approved by any health authority for the receiving, processing or packaging of any fluid milk product for Grade A disposition.

§ 1049.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool supply plant that is not an other order plant or a producer-handler plant, from which fluid milk products are shipped during the month to a pool plant.

§ 1049.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of a pool plant.

(b) Any cooperative association with respect to producer milk diverted for the account of such association pursuant to § 1049.13;

(c) Any cooperative association with respect to milk it receives for its account from the farm of a producer in a tank truck owned and operated by, or under the control of, such association, for delivery to a pool plant operated by another person, unless both the cooperative association and the operator of the pool plant notify the market administrator that the plant operator will be responsible for payment for the milk and is purchasing the milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples. Milk for which the cooperative association is the handler pursuant to this paragraph shall be deemed to have been received by the cooperative association at the location of the pool plant to which such milk is delivered.

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler; or

(f) Any person who operates an other order plant described in § 1049.7(c).

§ 1049.10 Producer-handler.

"Producer-handler" means a person who operates a dairy farm and a distributing plant and who receives no fluid milk products from other dairy farmers or from sources other than pool plants, and no milk products other than fluid milk products for reconstitution into fluid milk products: *Provided,* That such person provides proof satisfactory to the market administrator that the care and management of all dairy animals and other resources used in his own farm production and the operation of the processing and distributing business are at the personal enterprise and risk of such person.

§ 1049.11 [Reserved]

§ 1049.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who, in compliance with Grade A inspection requirements of a duly constituted health authority, produces milk for distribution as fluid milk products within the marketing area or produces milk acceptable for fluid consumption at Federal, State or municipal institutions, which milk is received at a pool plant, diverted pursuant to § 1049.13, or received by a handler pursuant to § 1049.9(c).

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a

pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1049.44(a)(8)(iii) and the corresponding step of § 1049.44(b); and

(3) Any person with respect to milk produced by him which is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

§ 1049.13 Producer milk.

"Producer milk" means all skim milk and butterfat contained in milk of any producer which is:

(a) Received during the month at one or more pool plants or by a handler pursuant to § 1049.9(c) (milk may be diverted during the month by a handler from a pool distributing plant to another pool plant(s) for not more days of production of producer milk than is physically received at the diverting pool plant).

(b) Received at a pool plant at least one day during the month from such producer or from a handler pursuant to § 1049.9(c) and then diverted by the operator of a pool plant or by a cooperative association to a nonpool plant that is not a producer-handler plant during the month under any of the following conditions:

(1) During April through August the operator of a pool plant or a cooperative association may divert the milk production of a producer from a pool plant to a nonpool plant on any number of days during the month.

(2) During September through March the milk of a producer diverted by the operator of a pool plant or a cooperative association to a nonpool plant shall be limited to the amounts specified in paragraphs (b)(2) (i) and (ii) of this section.

(i) The operator of a pool plant may divert the milk of producers (except producers for whom a cooperative association is diverting milk under the percentage limit of paragraph (b)(2)(ii) of this section) for not more days of production of producer milk than is physically received at the diverting pool plant or he may divert an aggregate quantity not exceeding 40 percent of the milk of all such producers.

(ii) A cooperative association may divert the milk of individual producers for not more days of production of producer milk than is physically received at a pool plant or it may divert an aggregate quantity of the milk of producers not exceeding 40 percent of all such milk either caused to be delivered to pool plants or diverted to nonpool plants by the cooperative association.

(3) When milk is diverted in excess of the limit by a handler who elects to divert on the basis of days-of-production, only that milk of the individual producer which was received at a pool plant or which was diverted to a nonpool plant for not more days of production than is physically received at a pool plant shall be considered producer milk.

(4) When milk is diverted in excess of the percentage limit by a handler who elects to divert on a percentage basis, eligibility as producer milk shall be forfeited on a quantity of milk equal to such excess. In such instances the diverting handler shall specify the dairy farmers whose milk is ineligible as producer milk. If the handler fails to designate such dairy farmers whose milk is ineligible, producer milk status shall be forfeited with respect to all milk diverted to nonpool plants by such handler.

(c) Diverted milk shall be deemed to be received by the handler at the pool plant or nonpool plant to which the milk is diverted, unless diverted to a plant located in any part of the marketing area or to a plant at which no location adjustment would apply pursuant to § 1049.52, in which case such diverted milk shall be deemed to be received at the pool plant from which diverted.

§ 1049.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1049.40(b)(1) from any source other than producers, or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1049.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1049.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1049.40(b)(1)) for which the handler fails to establish a disposition.

§ 1049.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form: Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

[39 FR 31288, Aug. 28, 1974, as amended at 40 FR 31943, July 30, 1975]

§ 1049.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1049.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1049.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act";

(b) To have full authority in the sale of milk of its members and is engaged in making collective sales of or marketing milk or milk products for its members; and

(c) To have all of its activities under the control of its members.

§ 1049.19 [Reserved]

§ 1049.20 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1049.51a:

(a) *Butter price.* "Butter price" means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) *Cheddar cheese price.* "Cheddar cheese price" means the simple average for the first 15 days of the month of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) *Nonfat dry milk price.* "Nonfat dry milk price" means the simple average, for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Division as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding work-day until the day such prices were previously reported. A work-day is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price.* "Edible whey price" means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

[46 FR 43380, Aug. 28, 1981]

HANDLER REPORTS

§ 1049.30 Reports of receipts and utilization.

On or before the 8th day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers pursuant to § 1049.9 (b) or (c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1049.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1049.9 (b) or (c) shall report:

(1) The quantities of skim milk and butterfat contained in receipts of milk from producers;

(2) The quantities of such receipts delivered to each pool plant of other handlers; and

(3) The classification of such receipts diverted pursuant to § 1049.13.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1049.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1049.9 (a), (b) and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1049.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1049.32 Other reports.

(a) On or before the day prior to diverting milk pursuant to § 1049.13, each handler shall notify the market administrator of his intention to divert such milk, the date or dates of such diversion, and the plant to which such milk is to be diverted.

(b) In addition to the reports required pursuant to paragraph (a) of this section, and §§ 1049.30 and 1049.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1049.40 Classes of utilization.

Except as provided in § 1049.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1049.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(e) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In fluid milk products and products specified in paragraph (b)(1) of this section that are destroyed or lost by a handler in a vehicular accident, flood, fire, or in a similar occurrence beyond his control, to the extent that the quantities destroyed or lost can be verified from records satisfactory to the market administrator;

(6) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1049.15, plus the fluid equivalent of loss of nonfat milk solids occurring in the process of modification in any case where determination of the quantity of added nonfat milk solids disposed of in such products is based upon laboratory analysis by the market administrator, such loss allowable pursuant to this paragraph (e)(6) not to exceed two percent of the fluid equivalent of the quantity of added nonfat milk solids so determined to be added; and

(7) In shrinkage assigned pursuant to § 1049.41(a) to the receipts specified in § 1049.41(a)(2) and in shrinkage specified in § 1049.41(b) and (c).

[39 FR 31288, Aug. 28, 1974, as amended at 42 FR 56950, Oct. 31, 1977]

§ 1049.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1049.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraphs (b) (1) through (7) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraphs (b) (1) through (7) of this section which was received in bulk fluid form.

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) Plus 1.5 percent of skim milk and butterfat, respectively, in milk received from a handler pursuant to § 1049.9(c), except that if the handler operating the pool plant files notice with the market administrator that he is purchasing such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph shall be 2.0 percent;

(3) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk diverted to such plant from another pool plant, except that if the operator

of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph (b)(3) shall be 2 percent;

(4) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph (b)(4) shall be zero;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(7) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(8) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraphs (b) (1), (2), (3), (5), (6) and (7) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1049.9 (b) or (c) but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph shall be zero.

§ 1049.42 Classification of transfers and diversions.

(a) *Transfers and diversions to pool plants.* Skim milk and butterfat transferred or diverted in the form of a fluid milk product to a pool plant from another pool plant or by a handler pursuant to § 1049.9 (b) or (c) and skim milk and butterfat transferred in the form of a bulk fluid cream product between pool plants shall be classified as Class I milk unless both parties to each such transfer or diversion request the same classification in another class. In either case, the classification of such transfers or diversions shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant or divertee-plant after the computations pursuant to § 1049.44(a)(12) and the corresponding step of § 1049.44(b);

(2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to § 1049.44(a)(7) or the corresponding step of § 1049.44(b), the skim milk or butterfat so transferred or diverted shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler or divertor-handler received during the month other source milk to be allocated pursuant to § 1049.44(a) (11) or (12) or the corresponding steps of § 1049.44(b), the skim milk or butterfat so transferred or diverted, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant or divertee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1049.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product; unless the following conditions apply:

(i) If the conditions described in paragraphs (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraphs (d)(2) (ii) through (viii) of this section:

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1049.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator.

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this paragraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this paragraph.

§ 1049.43 General classification rules.

In determining the classification of producer milk pursuant to § 1049.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1049.30 and shall compute separately for each pool plant and each handler pursuant to § 1049.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1049.40, 1049.41 and 1049.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1049.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1049.44 Classification of producer milk.

For each month the market administrator shall determine for each pool plant the classification of milk received from producers and from handlers pursuant to § 1049.9 (b) or (c) and the classification of milk received from producers by each handler pursuant to § 1049.9 (b) or (c) that was not received at a pool plant, as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1049.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1049.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1049.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This paragraph (a)(5) shall apply only if the pool plant was subject to the provisions of this paragraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1049.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1049.40(b)(1) that was not subtracted pursuant to paragraphs (a) (4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant.

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs

(a) (2) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a) (2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraphs (a)(8)(ii) (*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and then Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be the pounds of skim milk remaining in decreased by a like amount. In such case, each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(*b*) Subtract from the above result the sum of the pounds of skim milk at all pool plants of the handler in producer milk, receipts of fluid milk products from pool plants of other handlers, from handlers pursuant to § 1049.9 (b) and (c), and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1049.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraphs (a) (5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraphs (a)(11) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a) (2), (7)(v), and (8) (i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received.

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this paragraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this paragraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraphs (a)(7)(vi) and (8)(iii) of this section:

(i) Subject to the provisions of paragraphs (a)(12) (ii), (iii), and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1049.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computation pursuant to paragraph (a)(12)(i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12)(i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipt from handlers pursuant to § 1049.9(b) and (c) and in receipts of fluid milk products and bulk fluid cream products from other pool plants according to the classification assigned pursuant to § 1049.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage".

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1049.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1049.44 (a)(12) and the corresponding step of § 1049.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1049.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 14th day after the end of each month, report to each cooperative association, upon request by such association, the percentage of the milk caused to be delivered by the cooperative association or its members which was utilized in each class at each pool plant receiving such milk. For the purpose of this report, the milk so received shall be allocated to each class at each pool plant in the same ratio as all producer milk received at such plant during the month.

CLASS PRICES

§ 1049.50 Class prices.

Subject to the provisions of § 1049.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.53.

(b) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price computed pursuant to § 1049.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section except that for each month after the first month in which this paragraph is effective, the final Class II price shall be not less than the Class III price.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1049.51 and add 10 cents, and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1049.51a.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

[39 FR 31288, Aug. 28, 1974, as amended at 44 FR 42151, July 19, 1979; 46 FR 43380, Aug. 28, 1981]

§ 1049.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1049.51a Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1049.51 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1049.20 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following subparagraphs is of the total of the data represented in paragraphs (c) (1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

NOTE: The computation of the basic Class II formula price is affected by a determination document published on Sept. 6, 1984 at 49 FR 35078.

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

NOTE: The computation of the basic Class II formula price is affected by a determination document published on Sept. 6, 1984 at 49 FR 35078.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

[46 FR 43380, Aug. 28, 1981, as amended at 49 FR 35078, Sept. 6, 1984]

§ 1049.52 Plant location adjustments for handlers.

(a) For producer milk which is received at a pool plant located outside the area for which zero location adjustment is specified in paragraph (a)(1)(i) of this section, which milk is classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price computed pursuant to § 1049.50(a) shall be reduced on the basis of the applicable amount or rate for the location of such plant pursuant to paragraph (a) (1) or (2) of this section, respectively, except that in no event shall the adjustment result in a price less than the Class III price for the month. For the purpose of this section and § 1049.75, the distances to be computed shall be on the basis of the shortest hard-surfaced highway distances as determined by the market adminstrator:

(1) At any plant located within:

	Rate of adjustment per hundredweight (Cents)
(i) The State of Ohio or any Indiana county not specifically named in paragraphs (a)(1) (ii) through (iv) of this section	0
(ii) Any of the Indiana counties of: Adams, Allen, Blackford, Cass, Carroll, De Kalb, Huntington, Jay, Lagrange, Miami, Noble, Steuben, Wabash, Wells, White, Whitley	4
(iii) Any of the Indiana counties of: Benton, Elkhart, Fulton, Jasper, Kosciusko, Marshall, Newton, Pulaski, St. Joseph, and Berrien and Cass Counties, Mich.	8
(iv) Any of the Indiana counties of: Lake, La Porte, Porter, Starke	12

(2) For any plant at a location outside the territory specified in the preceding paragraph (a)(1) of this section, the applicable adjustment rate per hundredweight shall be based on the shortest highway distance between the plant and the nearest of the Monument Circle, Indianapolis, Ind., or the main post offices of Fort Wayne, South Bend, or Valparaiso, Ind., and shall be 1.5 cents for each 10 miles or fraction thereof from such point plus the amount of the location adjustment pursuant to paragraph (a)(1) of this section applicable at the respective point.

(b) For the purpose of calculating adjustments pursuant to this section, transfers between pool plants shall be assigned Class I disposition at the transferee-plant, in excess of the receipts at such plant from producers and handlers pursuant to § 1049.9 (b) and (c) and the volume assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor-plants at which no location adjustment is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

[39 FR 31288, Aug. 28, 1974, as amended at 44 FR 42151, July 19, 1979]

§ 1049.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month and, for each month after the first month in which this section is effective, the final Class II price for the preceding month; and on or before the 15th day of each month the tentative Class II price for the following month.

[46 FR 43381, Aug. 28, 1981]

§ 1049.54 Equivalent price.

If for any reason a price quotation or factor required by this part for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price or factor determined by the Secretary to be equivalent to the price or factor which is required.

UNIFORM PRICE

§ 1049.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk for each pool plant of each handler and for each handler pursuant to § 1049.9 (b) and (c) for milk that was not received at a pool plant as follows:

(a) Multiply by the applicable class prices the pounds of producer milk in each class as determined pursuant to § 1049.44 and the pounds of milk received from handlers pursuant to § 1049.9(c) (and allocated pursuant to § 1049.44(a)(13) and the corresponding step of § 1049.44(b)), and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1049.44(a)(14) and the corresponding step of § 1049.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1049.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1049.44(a)(9) and the corresponding step of § 1049.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1049.44(a)(7)(i) through (iv) and the corresponding step of § 1049.44(b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuent to § 1049.44(a)(7)(v) and (vi) and the corresponding step of § 1049.44(b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1049.44(a)(11) and the corresponding step of § 1049.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

§ 1049.61 Computation of uniform price (including weighted average price).

For each month the market administrator shall compute the uniform price per hundredweight of milk of 3.5 percent butterfat content received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1049.60 for all handlers who filed the reports prescribed by § 1049.30 for the month and who made the payments pursuant to § 1049.71 for the preceding month;

(b) Add an amount equal to the total value of the location adjustments computed pursuant to § 1049.75;

(c) Add an amount equal to one-half of the unobligated balance in the producer-settlement fund;

(d) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1049.60(f);

(e) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "weighted average price," and the "uniform price" for milk received from producers.

[39 FR 31288, Aug. 28, 1974, as amended at 44 FR 71402, Dec. 11, 1979; 49 FR 13003, Apr. 2, 1984; 49 FR 23031, June 4, 1984]

§ 1049.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 14th day after the end of each month the uniform price for such month.

PAYMENTS FOR MILK

§ 1049.70 Producer-settlement fund.

The market administrator shall maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments received pursuant to §§ 1049.71, 1049.76, 1049.77 and 1049.78 and out of which he shall make all payments pursuant to §§ 1049.72 and 1049.77: *Provided*, That a payment due a handler shall be offset against payments due the market administrator from such handler pursuant to §§ 1049.71, 1049.76, 1049.77, 1049.78, 1049.85 and 1049.86.

§ 1049.71 Payments to the producer-settlement fund.

(a) On or before the 15th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1049.60.

(2) The sum of:

(i) The value at the uniform price, adjusted pursuant to § 1049.75, of such handler's receipts of producer milk and milk received from handlers pursuant to § 1049.9(c);

(ii) The value at the weighted average price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1049.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is ap-

plicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

[39 FR 31288, Aug. 28, 1974, as amended at 44 FR 71403, Dec. 11, 1979]

§ 1049.72 Payments from the producer-settlement fund.

On or before the 16th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1049.71(a)(2) exceeds the amount computed pursuant to § 1049.71(a)(1). If the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds become available.

§ 1049.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for producer milk for which payment is not made to a cooperative association pursuant to paragraph (b) of this section, as follows:

(1) On or before the last day of each month, for producer milk received during the first 15 days of the month at not less than the Class III price for the preceding month; and

(2) On or before the 18th day after the end of each month, for each hundredweight of producer milk received during such month, an amount computed at not less than the uniform price as adjusted pursuant to §§ 1049.74, 1049.75 and 1049.86, less any payment made pursuant to paragraph (a)(1) of this section, and less the deduction for advertising and promotion made pursuant to § 1049.107. If by such date the handler has not received full payment from the market administrator pursuant to § 1049.72 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following receipt of the balance due from the market administrator.

(b) Each handler shall make payment to the cooperative association for producer milk, if such cooperative association is authorized to collect such payments for its members and exercises such authority, an amount equal to the sum of the individual payments otherwise payable for such producer milk, as follows:

(1) On or before two days prior to the last day of each month for producer milk received during the first 15 days of the month; and

(2) On or before the 16th day after the end of each month for milk received during such month.

(c) Each handler shall pay a cooperative association for milk received by the handler from the cooperative association as follows:

(1) In the case of milk received from a pool plant(s) operated by a cooperative association:

(i) For milk received during the first 15 days of the month, the handler shall pay the cooperative association on or before two days prior to the last day of such month not less than the Class III price for the preceding month;

(ii) For milk received during the month the handler shall pay the cooperative association on or before the 10th day of the following month not less than the applicable class prices pursuant to § 1049.50 adjusted by the butterfat differential specified in § 1049.74 and less any payments made pursuant to paragraph (c)(1)(i) of this section; and

(2) Each handler pursuant to § 1049.9(a) who receives milk from a cooperative association as a handler pursuant to § 1049.9(b) or (c), including the milk of producers who are not members of such association, and who the market administrator determines have authorized such cooperative association to collect payment for their milk, shall pay such cooperative for such milk as follows:

(i) On or before two days prior to the last day of the month for milk received during the first 15 days of the month, not less than the Class III price for the preceding month;

(ii) On or before the 16th day of the following month for milk received during the month, not less than the uniform price as adjusted pursuant to §§ 1049.74 and 1049.75, and less any payments made pursuant to paragraph (c)(2)(i) of this section.

(d) In making payments for producer milk pursuant to this section, each handler shall furnish each producer or cooperative association from whom he has received milk a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The month and identity of the producer;

(2) The daily and total pounds and the average butterfat content of producer milk;

(3) The minimum rate or rates at which payment to the producer is required pursuant to this order;

(4) The rate which is used in making the payment if such rate is other than the applicable minimum rate;

(5) The amount, or the rate per hundredweight, and nature of each deduction claimed by the handler, and

(6) The net amount of payment to such producer or cooperative association.

[39 FR 31288, Aug. 28, 1974, as amended at 44 FR 42152, July 19, 1979; 49 FR 23031, June 4, 1984]

§ 1049.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1049.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price for producer milk received or which is deemed to have been received at a pool plant shall be reduced according to the location of the pool plant at the rates set forth in § 1049.52(a), except that the adjusted uniform price plus the withholding rate for the Advertising and Promotion program computed in § 1049.121(e), shall be not less than the Class III price for the month.

(b) For purposes of computations pursuant to §§ 1049.71 and 1049.72 the weighted average price shall be adjusted at the rates set forth in § 1049.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted weighted average price shall not be less than the Class III price.

[44 FR 71403, Dec. 11, 1979, as amended at 49 FR 13003, Apr. 2, 1984]

§ 1049.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1049.30(b) and 1049.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant.

(4) Multiply the remaining pounds by the difference between the Class I price and the weighted average price, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and the weighted average price shall not be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1049.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1049.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order) except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1049.60 for such handler shall include, in lieu of the value of other source milk specified in § 1049.60(f) less the value of such other source milk specified in § 1049.71(a)(2)(ii), a value of milk determined pursuant to § 1049.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1049.7(b), subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1049.30(b) and 1049.31(b) similar reports for each such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(*c*) The value of milk determined pursuant to § 1049.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1049.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1049.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

[39 FR 31288, Aug. 28, 1974, as amended at 44 FR 71403, Dec. 11, 1979]

§ 1049.77 Adjustment of accounts.

Whenever verification by the market administrator of reports or payments of any handler discloses errors resulting in money due (a) the market administrator from such handler, (b) such handler from the market administrator, or (c) any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made not later than the date for making payment next following such disclosure.

§ 1049.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to § 1049.71, § 1049.76, § 1049.77(a), § 1049.78, § 1049.85, or § 1049.86(a) shall be increased three-fourths of 1 percent on the sixth day following the date such obligation is due and on the same day of each succeeding month until such obligation is paid.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1049.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler (except a handler pursuant to § 1049.9(b) or (c) for milk delivered to pool plants) shall pay to the market administrator on or before the 15th day after the end of the month 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including such handler's own farm production) and milk received from handler pursuant to § 1049.9(b) or (c);

(b) Other source milk allocated to Class I pursuant to § 1049.44(a)(7) and (11) and the corresponding steps of § 1049.44(b), except such other source milk that is excluded from the computations pursuant to § 1049.60(d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1049.76(a)(2).

§ 1049.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler in making payments to each producer pursuant to § 1049.73 shall deduct 5 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to producer milk received by such handler (except such handler's own farm production) during the month, and shall pay such deductions to the market administrator not later than the 15th day after the end of the month. Such money shall be used by the market administrator to verify or establish weights, samples, and tests of producer milk and to provide producers with market information. Such services shall be performed by the market administrator or by an agent engaged by and responsible to him.

(b) In the case of producers for whom a cooperative association is performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions as are authorized by such producers and, on or before the 15th day after the end of each month, pay over such deductions to the association rendering such services.

ADVERTISING AND PROMOTION PROGRAM

§ 1049.105 Dairy research and promotion order.

"Dairy Research and Promotion Order" means the order (7 CFR Part 1150) established by the Secretary pursuant to Title I, Subtitle B, of the Dairy and Tobacco Adjustment Act of 1983, Pub. L. 98-180, 97 Stat. 1128, as approved November 29, 1983, and any amendments thereto.

[49 FR 23031, June 4, 1984]

§ 1049.106 Qualified program.

"Qualified program" means a State or regional dairy product promotion, research or nutrition education program certified by the Secretary as a qualified program pursuant to Section 1150.153 of the Dairy Research and Promotion Order.

[49 FR 23031, June 4, 1984]

§ 1049.107 Deduction for advertising and promotion program.

On or before the 18th day after the end of each month, each handler described in § 1049.9 (a), (b), or (c) shall remit to the market administrator as a deduction from payments to producers an amount equal to the rate per hundredweight specified in § 1049.121(e) times the volume of milk pooled by each such producer for such month. When making such deductions from payments to producers, the handler shall credit any payments required under authority of State law applicable to such producers for an advertising and promotion program that is a qualified program. Such credit shall not exceed the amount of each producer's deduction computed pursuant to this section.

[49 FR 23031, June 4, 1984]

§ 1049.110 Agency.

"Agency" means an agency organized by producers and producers' cooperative associations, in such form and with methods of operation specified in this part, which is authorized to expend funds made available pursuant to § 1049.121(b)(1), on approval by the Secretary, for the purposes of establishing or providing for establishment of research and development projects, advertising (excluding brand advertising), sales promotion, educational, and other programs, designed to improve or promote the domestic marketing and consumption of milk and its products. Members of the Agency shall serve without compensation but shall be reimbursed for reasonable expenses incurred in the performance of duties as members of the Agency.

§ 1049.111 Composition of the Agency.

Each cooperative association or combination of cooperative associations as provided for under § 1049.113(b) with 3 percent or more of the total participating producers (producers who have not requested refunds for the most recent quarter) is authorized one Agency representative plus one additional Agency representative for each additional full 10 percent of the participating member producers it represents. Cooperative associations with less than 3 percent of the total participating producers that have elected not to combine pursuant to § 1049.113(b), and participating producers who are not members of cooperatives are authorized to select from such group, in total, one Agency representative for the first full 3 percent plus one additional Agency representative for each additional full 10 percent that such producers constitute of the total participating producers. For the purpose of the Agency's initial organization, all persons defined as producers shall be considered as participating producers.

§ 1049.112 Term of office.

The term of office of each member of the Agency shall be 1 year, or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

§ 1049.113 Selection of Agency members.

The selection of Agency members shall be made pursuant to paragraphs (a), (b), and (c) of this section. Each person selected shall qualify by filing with the market administrator a written acceptance promptly after being notified of such selection.

(a) Each cooperative association authorized one or more representatives to the Agency shall notify the market administrator of the name and address of each representative who shall serve at the pleasure of the cooperative.

(b) For purposes of this program, cooperative associations may elect to combine their participating memberships and, if the combined total of participating producers of such cooperatives is 3 percent or more of the total participating producers, such cooperatives shall be eligible to select a representative(s) to the Agency under the rules of § 1049.111 and paragraph (a) of this section.

(c) Selection of Agency members to represent participating nonmember producers and participating producer members of a cooperative association(s) having less than the required 3 percent of the producers participating in the advertising and promotion program and who have not elected to combine memberships as provided in paragraph (b) of this section, shall be supervised by the market administrator in the following manner:

(1) In June of each year the market administrator shall give notice to participating producer members of such cooperatives and participating nonmember producers of their opportunity to nominate one or more Agency representatives, as the case may be, and also shall specify the number of representatives to be selected.

(2) Following the closing date for nominations, the market administrator shall announce the nominees who are eligible for Agency membership and shall conduct a referendum among the individual producers eligible to vote. Election to membership shall be determined on the basis of the nominee (or nominees) receiving the largest number of eligible votes. If an elected representative subsequently discontinues producer status or is otherwise unable to complete his term of office, the market administrator shall appoint as his replacement the participating producer who received the next highest number of eligible votes.

[39 FR 31288, Aug. 28, 1974, as amended at 44 FR 71403, Dec. 11, 1979]

§ 1049.114 Agency operating procedure.

A majority of the Agency members shall constitute a quorum and any action of the Agency shall require a majority of concurring votes of those present and voting, unless the Agency determines that more than a simple majority shall be required.

§ 1049.115 Powers of the Agency.

The Agency is empowered to:

(a) Administer the terms and provisions within the scope of Agency authority pursuant to § 1049.110.

(b) Make rules and regulations to effectuate the purposes of Pub. L. 91-670;

(c) Recommend amendments to the Secretary; and

(d) With the approval of the Secretary, enter into contracts and agreements with persons or organizations as deemed necessary to carry out advertising and promotion programs and projects specified in §§ 1049.110 and 1049.117.

§ 1049.116 Duties of the Agency.

The Agency shall perform all duties necessary to carry out the terms and provisions of this program including, but not limited to, the following:

(a) Meet, organize, and select from among its members a chairman and such other officers and committees as may be necessary, and adopt and make public such rules as may be necessary for the conduct of its business;

(b) Develop programs and projects pursuant to §§ 1049.110 and 1049.117;

(c) Keep minutes, books, and records, and submit books and records for examination by the Secretary and furnish any information and reports requested by the Secretary;

(d) Prepare and submit to the Secretary for approval prior to each quarterly period a budget showing the projected amounts to be collected during the quarter and how such funds are to be disbursed by the Agency;

(e) When desirable, establish an advisory committee(s) of persons other than Agency members;

(f) Employ and fix the compensation of any person deemed to be necessary to its exercise of powers and performance of duties;

(g) Establish the rate of reimbursement to the members of the Agency for expenses in attending meetings, and pay the expenses of administering the Agency; and

(h) Provide for the bonding of all persons handling Agency funds in an amount and with surety thereon satisfactory to the Secretary.

§ 1049.117 Advertising, research, education, and promotion program.

The Agency shall develop and submit to the Secretary for approval all programs or projects undertaken under the authority of this part. Such programs or projects may provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of milk and milk products on a nonbrand basis;

(b) The utilization of the services of other organizations to carry out Agency programs and projects if the Agency finds that such activities will benefit producers under this part; and

(c) The establishment, support, and conduct of research and development projects and studies that the Agency finds will benefit all producers under this part.

§ 1049.118 Limitation of expenditures by the Agency.

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1049.121(b)(1) shall be utilized for administrative expense of the Agency.

(b) Agency funds shall not, in any manner, be used for political activity or for the purpose of influencing governmental policy or action, except in recommending to the Secretary amendments to the advertising and promotion program provisions of this part.

(c) Agency funds may not be expended to solicit producer participation.

(d) Agency funds may be used only for programs and projects promoting the domestic marketing and consumption of milk and its products.

§ 1049.119 Personal liability.

No member of the Agency shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member in performance of his duties, except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

§ 1049.120 Procedure for requesting refunds.

Any producer may apply for refund under the procedure set forth under paragraphs (a) through (c) of this section.

(a) Refund shall be accomplished only through application filed with the market administrator in the form prescribed by the market administrator and signed by the producer. Only that information necessary to identify the producer and the records relevant to the refund may be required of such producer. As long as the Dairy Research and Promotion Order is in effect, any producer who files a request for refund in accordance with this section may designate a qualified program to receive such refund.

(b) Except as provided in paragraphs (c) and (d) of this section, the request shall be submitted within the first 15 days of December, March, June, or September for milk to be marketed during the ensuing calendar quarter beginning on the first day of January, April, July and October, respectively.

(c) Except as provided in paragraph (d) of this section, a dairy farmer who first acquires producer status under this part after the 15th day of December, March, June or September, as the case may be, and prior to the end of the ensuing calendar quarter may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld during such calendar quarter pursuant to § 1049.121(b).

(d) A dairy farmer who, with respect to any calendar quarter, has appropriately filed a request for the refund of program assessments on his marketings of milk under another order that provides for an advertising and promotion program will be eligible on the basis of his request filed under the other order for a similar refund with respect to his producer milk marketed under this order during such quarter for which deductions were made pursuant to § 1049.121(b).

[39 FR 31288, Aug. 28, 1974, as amended at 44 FR 71403, Dec. 11, 1979; 49 FR 23031, June 4, 1984]

§ 1049.121 Duties of the market administrator.

Except as specified in § 1049.116, the market administrator, in addition to other duties specified by this part, shall perform all the duties necessary to administer the terms and provisions of the advertising and promotion program including, but not limited to, the following:

(a) In July of each year, conduct a referendum to determine representation on the Agency pursuant to § 1049.113(c).

(b) Each month deposit into an advertising and promotion fund, separately accounted for, an amount equal to the funds received from handlers pursuant to § 1049.107. The amount deposited shall be disbursed as follows:

(1) To the Agency each month, all such funds less any necessary amount held in reserve to cover refunds pursuant to paragraph (b) (3) or (4) of this section, and payments to cover expenses of the market administrator incurred in the administration of the advertising and promotion program (including audit).

(2) [Reserved]

(3) As long as the Dairy Research and Promotion Order is in effect, paragraph (b)(4) of this section shall apply in lieu of this paragraph. After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1049.120. Such refund shall be that amount which was obtained pursuant to § 1049.107 for each calendar quarter.

(4) As long as the Dairy Research and Promotion Order is in effect, remit to any qualified programs any refunds designated by producers to be paid to such programs no later than the last day of the month following the month in which the milk was marketed. If a refund request does not designate a qualified program to receive such money, the refund shall be remitted to the National Dairy Promotion and Research Board, which is defined in the Dairy Research and Promotion Order.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1049.105 through 1049.122).

(d) Audit the Agency's records of receipts and disbursements.

(e) As soon as possible after the beginning of each year, compute the rate of withholding by multiplying the simple average of the monthly uniform prices for the last quarter of the preceding year by 0.75 percent and rounding to the nearest whole cent. This rate shall apply during the 12-month period beginning with April of the current year: *Provided*, That the rate shall be 10 cents per hundredweight as long as the Dairy Research and Promotion Order is in effect.

(f) As soon as possible after the rate of withholding is computed, notify in writing each producer currently on the market and any new producer that subsequently enters the market of the withholding rate. This notification shall be repeated annually thereafter only if there is any change in the rate from the previous period.

[44 FR 71403, Dec. 11, 1979, as amended at 49 FR 23031, June 4, 1984]

§ 1049.122 Liquidation.

In the event that the provisions of this advertising and promotion program are terminated, any remaining uncommitted funds applicable thereto shall revert to the producer-settlement fund of § 1049.70.

PART 1050—MILK IN CENTRAL ILLINOIS MARKETING AREA

Subpart—Order Regulating Handling

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ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1050.85 Assessment for order administration.
1050.86 Deduction for marketing services.

AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended (7 U.S.C. 601-674).

SOURCE: 39 FR 15448, May 3, 1974, unless otherwise noted.

Subpart—Order Regulating Handling

GENERAL PROVISIONS

§ 1050.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1050.2 Central Illinois marketing area.

The "Central Illinois marketing area", hereinafter called the "marketing area", means all the territory within the following counties, all of which are in the State of Illinois, together with all municipal corporations therein and all institutions owned or operated by the Federal, State, county, or municipal governments located wholly or partially within such counties:

ZONE I

Cass, Ford, Fulton, Knox, Livingston, Marshall, Mason, McDonough, Peoria, Stark, Tazewell, Warren, Woodford.

ZONE II

Bureau, Grundy, Iroquois, Kankakee, La Salle, Putnam.

§ 1050.3 Route disposition.

"Route disposition" means a delivery (including disposition from a plant store or from a distribution point and distribution by a vendor or vending machine) of any fluid milk product classified as Class I milk to a retail or wholesale outlet other than a pool plant or a nonpool plant.

§ 1050.4 [Reserved]

§ 1050.5 Distributing plant.

"Distributing plant" means any plant at which fluid milk products are processed and packaged and from which there is route disposition of Grade A fluid milk products in the marketing area during the month.

§ 1050.6 Supply plant.

"Supply plant" means any plant at which Grade A milk is received from dairy farmers and from which fluid milk products are moved to a distributing plant.

§ 1050.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means a plant specified in paragraph (a), (b), or (c) of this section. For purposes of determining pool plant status pursuant to this section, Grade A receipts from dairy farmers shall include all quantities of milk diverted pursuant to § 1050.13(b) and (c) by an operator of a pool plant.

(a) A distributing plant from which during the month there is:

(1) Route disposition of fluid milk products, except filled milk, in the marketing area equal to 10 percent or more of its Grade A receipts from dairy farmers, handlers described in § 1050.9(c), and other pool plants, such receipts to be exclusive of fluid milk products (except filled milk) transferred without specific Class II or Class III designation to other pool plants described in this paragraph, or from which there is an average of not less than 7,000 pounds per day of route disposition, except filled milk, in the marketing area; and

(2) Total route disposition of fluid milk products, except filled milk, equal to 50 percent or more of its Grade A receipts from dairy farmers, handlers described in § 1050.9(c), and other pool plants, such receipts to be exclusive of fluid milk products (except filled milk) transferred without specific Class II or Class III designation to other pool plants described in this paragraph, during the months of August through February and 40 percent during all other months.

(b) A supply plant from which during the month an amount equal to 50 percent or more of its receipts of Grade A milk from dairy farmers and handlers described in § 1050.9(c) is moved to and received at a pool plant(s) described in paragraph (a) of this section which have at least 50 percent Class use (not including filled milk) of the total of such supply plant milk and producer milk receipts in the months of August through February and 40 percent in other months.

(c) Any supply plant which qualified pursuant to paragraph (b) of this section in each of the immediately preceding months of September through January shall be a pool plant for the months of February through August unless the operator of such plant notifies the market administrator in writing before the first day of any such month of his intention to withdraw such plant as a pool plant, in which case such plant shall thereafter be a nonpool plant until it again meets the shipping requirements set forth in paragraph (b) of this section.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A distributing plant qualified pursuant to paragraph (a) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another order issued pursuant to the Act and from which during the month there is a greater quantity of route disposition, except filled milk, in the marketing area regulated by the other order than in the Central Illinois marketing area: *Provided*, That such a distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of such route disposition is made in such other market-

ing area, unless the other order requires regulation of the plant without regard to its qualifying as a pool plant under this order subject to the proviso of this paragraph;

(3) A distributing plant qualified pursuant to paragraph (a) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another Federal order and from which during the month there is greater quantity of route disposition, except filled milk, in the Central Illinois marketing area than in the other marketing area, and such other order which fully regulates the plant does not contain provisions to exempt the plant from regulation even though such plant has greater route disposition in the marketing area of the Central Illinois order; and

(4) Any plant qualified pursuant to paragraph (c) of this section for any portion of the period of February through August, inclusive, that the milk at such plant is subject to the classification and pricing provisions of another order issued pursuant to the Act.

§ 1050.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products are shipped to a pool plant.

§ 1050.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of a pool plant;

(b) Any cooperative association with respect to milk of producers diverted for its account pursuant to § 1050.13;

(c) Any cooperative association with respect to milk it receives for its account from the farm of a producer in a tank truck owned and operated by, or under the control of, such association, for delivery to a pool plant(s);

(d) Any person in his capacity as the operator of a partially regulated distributing plant;

(e) A producer-handler;

(f) Any person who operates an other order plant described in § 1050.7(d); and

(g) Any person in his capacity as the operator of an unregulated supply plant.

§ 1050.10 Producer-handler.

"Producer-handler" means a person who:

(a) Operates a distributing plant and processes milk from his own farm production and who disposes of all or a portion of such milk as route disposition in the marketing area but who receives no milk from other dairy farmers or fluid milk products from nonpool plants: *Provided*, That the skim milk and butterfat disposed of in the form of fluid milk products designated as Class I milk pursuant to § 1050.40(a) does not exceed the skim milk and butterfat, respectively, in the form of milk from his own farm production, and in the form of fluid milk products from pool plants of other handlers, allowing for inventory derived from such sources; and

(b) Assumes as his personal enterprise and risk the processing and distributing of fluid milk products and the maintenance, care and management of dairy animals and other resources necessary to produce his own farm milk production.

§ 1050.11 [Reserved]

§ 1050.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority, and whose milk is (1) received at a pool plant, (2) diverted pursuant to § 1050.13 or (3) accounted for by a cooperative association pursuant to § 1050.13(b).

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1050.44(a)(8)(iii) and the corresponding step of § 1050.44(b); and

(3) Any person with respect to milk produced by him which is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

§ 1050.13 Producer milk.

"Producer milk" means all skim milk and butterfat contained in milk from producers that is:

(a) Received at a pool plant from producers or from a handler described in § 1050.9(c);

(b) Represented by the difference between the quantity of milk received by a handler described in § 1050.9(c) at producers' farms and the quantity of such milk delivered to pool plants. For the purposes of §§ 1050.52 and 1050.75, such milk shall be deemed to have been received by such handler at the pool plant to which all other producer milk in the same tank truck was delivered;

(c) Diverted by a handler from a pool plant for the account of the plant operator to another pool plant(s) for not more days of production of such producer's milk than is physically received at a pool plant(s) from which diverted. For pricing purposes such diverted milk shall be deemed to be received by the diverting handler at the location of the plant to which diverted;

(d) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant, subject to the conditions of this paragraph. For pricing purposes, milk so diverted shall be deemed to be received at the plant from which diverted, unless the plant to which the milk is diverted is located more than 110 miles from the city hall in Peoria, Ill. (by shortest highway distance as determined by the market administrator) in which case the milk shall be deemed to be received by the diverting handler at the location of the plant to which diverted:

(1) During May, June and July the operator of a pool plant or a cooperative association may divert the milk production of a producer on any number of days;

(2) Subject to the conditions set forth in paragraph (d)(4) of this section, during the months of August through April the operator of a pool plant may divert the milk of a producer for not more days of production of such producer's milk than it is physically received at the pool plant from which diverted: *Provided*, That the total quantity of producer milk diverted does not exceed 35 percent of the physical receipts of producer milk at the handler's pool plant during the month, exclusive of milk of producers who are members of a cooperative association that is diverting milk and the milk of other producers that is diverted pursuant to paragraph (d)(3) of this section;

(3) Subject to the conditions set forth in paragraph (d)(4) of this section, during the months of August through April a cooperative association may divert the milk of producers for not more days of production of each producer's milk than is physically received at a pool plant: *Provided*, That the total quantity of producer milk does not exceed 35 percent of (i) its member milk physically received at pool plants during such month and (ii) other producer milk for which the cooperative association is the handler pursuant to § 1050.9(c) during such month;

(4) In the case where a cooperative association has notified the market administrator and the handler in writing prior to the first day of the month that milk of specified member producers will not be diverted by the coopera-

tive and is not to be included in computing the cooperative association's diversion percentage for the month, milk of such producers shall be deducted from the cooperative's total receipts of member milk for the purposes specified in paragraph (c)(3) of this section and added to the total milk receipts included in computing the diversions of the pool plant handler who receives their milk for the purposes specified in paragraph (c)(2) of this section; and

(5) When milk is diverted in excess of the limits specified in paragraphs (d) (2) and (3) of this section, eligibility as producer milk under this section shall be forfeited on the excess quantity. In such event the diverting handler shall specify the dairy farmers whose milk is ineligible as producer milk. If a handler fails to designate such dairy farmers whose milk is ineligible, producer milk status shall be forfeited with respect to all milk diverted to nonpool plants by such handler.

§ 1050.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1050.40(b)(1) from any source other than producers, handlers described in § 1050.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1050.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1050.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1050.40(b)(1)) for which the handler fails to establish a disposition.

§ 1050.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form: Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

[39 FR 15448, May 3, 1974, as amended at 40 FR 31943, July 30, 1975]

§ 1050.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1050.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1050.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To be engaged in making collective sales, or marketing milk or its products for its members.

1050.19 [Reserved]

§ 1050.20 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1050.51a:

(a) *Butter price.* "Butter price" means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) *Cheddar cheese price.* "Cheddar cheese price" means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) *Nonfat dry milk price.* "Nonfat dry milk price" means the simple average, for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Division as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding work-day until the day such prices were previously reported. A work-day is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price.* "Edible whey price" means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

[46 FR 43381, Aug. 28, 1981]

HANDLER REPORTS

§ 1050.30 Reports of receipts and utilization.

On or before the 7th day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1050.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1050.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1050.9(b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1050.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1050.9(a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1050.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1050.32 Other reports.

(a) Not later than the 7th day after the end of the month, each handler operating a pool plant shall report to the market administrator, for each of his pool plants separately, the name and address of each producer from whom milk was received during the month with statements showing dates on which such producer started shipping and the date on which milk shipments stopped.

(b) In addition to the reports required pursuant to §§ 1050.30 and 1050.31 and paragraph (a) of this section, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1050.40 Classes of utilization.

Except as provided in § 1050.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1050.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or

more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk 5 (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1050.15; and

(6) In shrinkage assigned pursuant to § 1050.41(a) to the receipts specified in § 1050.41(a)(2) and in shrinkage specified in § 1050.41(b) and (c).

§ 1050.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1050.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraphs (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraphs (b) (1) through (6) of this section which was received in bulk fluid form;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in § 1050.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in

§ 1050.9(c) and in milk diverted to such plant from another pool plant, except that, in either case, if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph (b)(2) shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraphs (b)(1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1050.9(b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1050.42 Classification of transfers and diversions.

(a) *Transfers and diversions to pool plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers or diversions shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant or divertee-plant after the computations pursuant to § 1050.44(a)(12) and the corresponding step of § 1050.44(b);

(2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to § 1050.44(a)(7) or the corresponding step of § 1050.44(b), the skim milk or butterfat so transferred or diverted shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler or divertor-handler received during the month other source milk to be allocated pursuant to § 1050.44(a) (11) or (12) or the corresponding steps of § 1050.44(b), the skim milk or butterfat so tranferred or diverted, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant or divertee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2) or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1050.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraphs (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraphs (d)(2) (ii) through (viii) of this section:

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1050.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this paragraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this paragraph.

§ 1050.43 General classification rules.

In determining the classification of producer milk pursuant to § 1050.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1050.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1050.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1050.40, 1050.41, and 1050.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classificaton of producer milk for which a cooperative association is the handler pursuant to § 1050.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1050.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1050.9(a) for each of his pool plants separately and of each handler described in § 1050.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1050.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1050.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1050.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1050.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1050.40(b)(1) that was not subtracted pursuant to paragraphs (a) (4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a) (2) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a) (2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraphs (a)(8)(ii) (*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler: and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1050.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraphs (a) (5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraphs (a)(11) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a) (2), (7)(v), and (8) (i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this paragraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this paragraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraphs (a)(7)(vi) and (8)(iii) of this section:

(i) Subject to the provisions of paragraphs (a)(12)(ii), (iii), and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1050.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12)(i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse directions by a like amount; and

(iv) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12)(i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1050.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1050.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1050.44(a)(12) and the corresponding step of § 1050.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1050.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operation a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month, report to each cooperative association which so requests, the class utilization of producer milk received by each handler from a cooperative association or from members of the association. For the purpose of this report, the milk caused to be so delivered by an association shall be prorated to each class in the proportion that the total receipts of milk received from producers by such handler were used in each class.

CLASS PRICES

§ 1050.50 Class prices.

Subject to the provisions of § 1050.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.39: *Provided,* That from the effective date hereof through March 1975 the Class I price shall be the basic formula price for the preceding month plus $1.39.

(b) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price computed pursuant to § 1050.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, except that, for each month after the first month in which this paragraph is effective, the final Class II price shall be not less than the Class III price.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1050.51 and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1050.51a.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

[39 FR 15448, May 3, 1974, as amended at 40 FR 6316, Feb. 11, 1975; 46 FR 43381, Aug. 28, 1981]

§ 1050.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1050.51a Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1050.51 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section.

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1050.20 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (c) (1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

NOTE: The computation of the basic Class II formula price is affected by a determination document published on Sept. 6, 1984 at 49 FR 35078.

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

NOTE: The computation of the basic Class II formula price is affected by a determination document published on Sept. 6, 1984 at 49 FR 35078.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

[46 FR 43382, Aug. 28, 1981, as amended at 47 FR 23418, May 28, 1982; 49 FR 35078, Sept. 6, 1984]

§ 1050.52 Plant location adjustments for handlers.

(a) The Class I price for producer milk at a plant that is outside Zone I shall be adjusted as follows:

(1) At a plant in Zone II or in the Illinois counties of Henry and Mercer, the Class I price shall be decreased 5 cents; and

(2) At a plant located outside the State of Illinois, or in the State of Illinois but north of the northernmost boundaries of the counties of Mercer, Henry, Bureau, La Salle, Grundy, and Kankakee the Class I price shall be reduced 7.5 cents if such plant is 50 or more miles by the shortest highway distance, as determined by the market administrator from the City Hall in Peoria, Ill., plus an additional 1.5 cents for each 10 miles or fraction thereof that such distance exceeds 60 miles.

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned Class I disposition at the transferee-plant only to the extent that 105 percent of Class I disposition at the transferee-plant exceeds the sum of receipts at such plant from producers and handlers described in § 1050.9(c), and the volume assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1050.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month and, for each month after the first month in which this section is effective, the final Class II price for the preceding month; and on or before the 15th day of each month the tentative Class II price for the following month.

[46 FR 43382, Aug. 28, 1981]

§ 1050.54 Equivalent price.

If for any reason a price quotation required by this part for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price which is required.

Uniform Price

§ 1050.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1050.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1050.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1050.44(a)(14) and the corresponding step of § 1050.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1050.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1050.44(a)(9) and the corresponding step of § 1050.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1050.44(a)(7) (i) through (iv) and the corresponding step of § 1050.44(b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1050.44(a)(7) (v) and (vi) and the corresponding step of § 1050.44(b);

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1050.44(a)(11) and the corresponding step of § 1050.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(g) For the first month that this paragraph is effective, subtract the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class II price, both for the preceding month, by the hundredweight of skim milk and butterfat in any fluid milk product or product specified in § 1050.40(b) that was in the plant's inventory at the end of the preceding month and classified as Class I milk.

§ 1050.61 Computation of uniform price (including weighted average price).

For each month the market administrator shall compute the uniform price per hundredweight of milk of 3.5 percent butterfat content which is received from producers at plants at which no location adjustment pursuant to § 1050.52 is applicable as follows:

(a) Combine into one total the values computed pursuant to § 1050.60 for all handlers who filed the reports prescribed by § 1050.30 for the month and who made the payments pursuant to § 1050.71 for the preceding month;

(b) Add an amount equal to the sum of the location and zone adjustments computed pursuant to § 1050.75;

(c) Add an amount equal to one-half of the unobligated balance in the producer-settlement fund;

(d) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1050.60(f);

(e) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "weighted average price," and the "uniform price" for milk received from producers.

[39 FR 15448, May 3, 1974, as amended at 45 FR 23404, Apr. 7, 1980]

§ 1050.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 12th day after the end of each month the uniform price for such month.

PAYMENTS FOR MILK

§ 1050.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund," which shall function as follows:

(a) All payments made by handlers pursuant to §§ 1050.71, 1050.76, and 1050.77 shall be deposited in such fund and from which shall be made all payments pursuant to §§ 1050.72 and 1050.77: *Provided*, That any payments due to any handler shall be offset by any payments due from such handler; and

(b) All amounts subtracted pursuant to § 1050.61(g) shall be deposited in this fund and set aside as an obligated balance until withdrawn to effectuate § 1050.73 in accordance with the requirements of § 1050.61(h).

§ 1050.71 Payments to the producer-settlement fund.

(a) On or before the 15th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1050.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1050.75, of such handler's receipts of producer milk; and

(ii) The value at the weighted average price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1050.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

§ 1050.72 Payments from the producer-settlement fund.

On or before the 17th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1050.71(a)(2) exceeds the amount computed pursuant to § 1050.71(a)(1). The market administrator shall offset any payment due any handler against payments due from such handler.

§ 1050.73 Payments to producers and to cooperative associations.

(a) On or before the 20th day of the following month, each handler shall make payment to each producer for milk received from such producer during such month:

(1) An amount equal to not less than the uniform price, as adjusted pursuant to §§ 1050.74 and 1050.75, multiplied by the hundredweight of milk received from such producer during the month, subject to the following adjustments:

(i) Less deductions for marketing services made pursuant to § 1050.86;

(ii) Plus or minus adjustments for errors made in previous payments made to such producer; and

(iii) Less proper deductions authorized in writing by such producer: *Provided*, That, if by such date, such handler has not received full payment from the market administrator pursuant to § 1050.72 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payments to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after the receipt of the balance due from the market administrator;

(b) Payments required in paragraph (a) of this section for milk caused to be delivered to such handler by a cooperative association qualified under § 1050.18 shall be made to such association, or its duly authorized agent, which the market administrator determines is authorized by such producers to collect payment for their milk and which has so requested the handler in writing. Such handler shall, on or before the 18th day of the following month, pay the cooperative association for milk received during the month from producers at the direction of such association as determined by the market administrator an amount equal to not less than the amounts due such producers as determined pursuant to paragraph (a) of this section, less any deductions authorized in writing by such association: *Provided*, That the association has provided the handler with a written promise to reimburse the handler the amount of any actual loss incurred by such handler because of any improper claim on the part of the cooperative association;

(c) On or before the 18th day after the end of each month, each handler shall pay to each cooperative association for milk the handler received at his pool plant from a pool plant(s) operated by such association, not less than the minimum prices for milk in each class, as adjusted by the butterfat differential specified in § 1050.74, that are applicable at the location of the handler's pool plant;

(d) On or before the 18th day of the following month, each handler, in his capacity as operator of a pool plant, who receives milk for which a cooperative association is the handler pursuant to § 1050.9(c), including the milk of producers who are not members of such association, and who the market administrator determines have authorized such cooperative association to collect payments for their milk, shall pay such cooperative association for such milk at the uniform price as adjusted pursuant to §§ 1050.74 and 1050.75; and

(e) Each handler who received milk during the month from producers for which payment is to be made to a cooperative association pursuant to paragraph (b) of this section shall report on or before the 7th day after the end of the month to such cooperative association for each such producer on forms approved by the market administrator:

(1) The total pounds of milk received from each producer together with the butterfat content of such milk; and

(2) The amount or rate and nature of any deductions authorized by a cooperative association.

§ 1050.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1050.75 Plant location adjustments for producers and on nonpool milk.

(a) In making payments pursuant to § 1050.73, the uniform price per hundredweight for producer milk received at a plant outside Zone I shall be adjusted according to the location of the plant at the rates set forth in § 1050.52.

(b) For purposes of computation pursuant to §§ 1050.71 and 1050.72, the weighted average price shall be adjusted in the same manner as the uniform price is adjusted pursuant to paragraph (a) of this section for the location of the nonpool plant from which the milk was received, except that the adjusted weighted average price shall not be less than the Class III price.

§ 1050.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1050.30(b) and 1050.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the weighted average price, both prices to be applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1050.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1050.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1050.60 for such handler shall include, in lieu of the value of other source milk specified in § 1050.60(f) less the value of such other source milk specified in § 1050.71(a)(2)(ii), a value of milk determined pursuant to § 1050.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1050.7 (b) and (c), subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1050.30(b) and 1050.31(b) similar reports for each such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(*c*) The value of milk determined pursuant to § 1050.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1050.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1050.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

§ 1050.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses errors resulting in moneys due (a) the market administrator from such handler, (b) such handler from the market administrator, or (c) any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments as set forth in the provisions under which such error occurred.

§ 1050.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to § 1050.71, § 1050.85, or § 1050.86 shall be increased one-half of 1 percent for each month or portion therof that such payment is overdue.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1050.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler (excluding a handler described in § 1050.9(c) with respect to milk delivered to pool plants) shall pay to the market administrator on or before the 20th day after the end of the month 5 cents per hundredweight or such less amount as the Secretary may prescribe with respect to:

(a) Producer milk (including such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1050.44(a)(7) and (11) and the corresponding steps of § 1050.44(b), except such other source milk that is excluded from the computations pursuant to § 1050.60(d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1050.76(a)(2).

§ 1050.86 Deduction for marketing services.

(a) *Deduction for marketing services.* Except as set forth in paragraph (b) of this section, each handler in making payments to producers, pursuant to § 1050.73, shall deduct 6 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to all milk received by such handler from producers (excluding such handler's own production) during the month, and shall pay such deductions to the market administrator on or before the 20th day after the end of such month. Such monies shall be used by the market administrator to verify weights, samples, and tests of milk received from such producers and to provide them with market information. Such services shall be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him.

(b) *Producer's cooperative association.* In the case of producers for whom a cooperative association is actually performing, as determined by the Secretary, the services set forth in paragraph (a) of this section each handler, in lieu of the deduction specified in paragraph (a) of this section, shall make such marketing service deductions as are authorized by producer-members, and pay the money so deducted to the cooperative association on or before the 20th day after the end of the month.

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